# The Solicitors' Journal

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## Current Topics.

### The Duchy of Cornwall.

WHILE Cornwall, as the "delectable Duchy," has had its full meed of celebration in literature, the recent visit of His Majesty to the western county, where, despite the inclemency of the elements, he was greeted by the inhabitants with that enthusiasm always accorded to their overlord, and where he received from them the quaint feudal dues betokening the terms of their tenures, is a reminder of its unique legal and constitutional relation to the royal family. As we learn from writers on constitutional law, the eldest son born to the reigning monarch becomes Duke of Cornwall immediately on birth, being later created Prince of Wales by letters patent, but it is as Duke that the powers and revenues of the Duchy vest in him. When, as is now the case, there is no Prince of Wales, the Duchy and its revenues vest in the Sovereign who by warrant may authorise the regular officers of the Duchy to exercise in his name and on his behalf the powers and privileges in relation to the Duchy which are vested in him. Among these officers is the Attorney-General for the Duchy, whose precise status in the courts was solemnly argued in the old case of *Garrow* v. *St. Aubyn* (Wightwick's Reports, 167), where it was quaintly laid down that "it is consistent with the dignity and rank of the Prince of Wales that he should be represented in his father's courts, not by any common or ordinary person, but by known and acknowledged officers who may be responsible to him." Many distinguished lawyers have been proud to hold the office of Attorney-General for the Duchy, among those of the past being ERSKINE, afterwards Lord Chancellor, and in more recent times SIR HENRY JAMES, and the present holder, SIR WALTER MONCKTON, K.C. Cornwall being a Duchy also accounts for the fact that its sheriff is not nominated at the annual proceeding presided over by the Chancellor of the Exchequer in the Lord Chief Justice's Court on the morrow of St. Martin, but is appointed directly by the Duke.

### The Coal Bill: Powers of the Commission.

THE consideration in Committee of the whole House, on Monday, of the first of a long list of amendments to the Coal Bill, gave rise to a debate which revealed a wide divergence of opinion concerning the policy formulated by the measure and pointed to the difficulties associated with a *via media* between full nationalisation of the coal resources of the country and the continuation of the present system of private ownership. It will be recalled that under cl. 2 (1) of the Bill, the Coal Commission, constituted under the previous clause to exercise and perform the powers and duties set out in the proposed Act, is not itself to engage in the business of coal-mining or to carry on any operations for coal-mining purposes, other than searching and boring for coal, while the Commission is charged with the duty of controlling and managing the premises acquired under the measure by granting coal-mining leases or otherwise in such a manner consistently with the provisions of the measure as it thinks best for promoting the interests, efficiency, and better organisation of the industry. The amendment before the House contemplated the inclusion among the functions of the Commission of the business of coal-mining, and any operations for coal-mining purposes and the treatment of coal. This amendment was defeated by the substantial majority of 240 votes to 118, but its wide implications led to the expression of general views which will doubtless be brought to bear, possibly with greater success, upon the discussion of other clauses of the Bill. These may, therefore, be shortly referred to. The most unprejudiced observer cannot fail to be impressed by the peculiar difficulties of the Coal Commission's situation, and, perhaps, not the least of them is that inherent in the ownership of a substance which it is to be statutorily barred from exploiting itself. Thus, one member, whose political label does not commit him to nationalisation as an economic creed, expressed himself as unable to see the logic of giving the Commission the right to bore and search for coal, and at the same time withholding from it the right to work coal. It was urged that the absence of such a right would handicap the Commission in bargaining for the working out of the coal and that it was neither fair nor equitable to withhold it.

### Public or Private Coal-Mining?

THE protagonists of nationalisation were, of course, only acting in accordance with their political convictions in urging the acceptance of the amendment and one of them was optimistic enough to look forward to the practical comparison in efficiency which its acceptance would have afforded by the contemporaneous existence of publicly and privately mined coal. On the other hand, the view that coal-mining by the State would lead to additional burdens being thrown upon the taxpayer seems, if the result of the debate affords any criterion, to have commended itself to the majority of the

House. This view was voiced by a member who said that normally, if a colliery company got into difficulties, it was carried on for months, sometimes for years, by receivers rather than that it should be closed down, because it was known that if a colliery was allowed to be shut down, it was wholly uneconomic to try to open it again. The suggestion of Opposition members was, it was said, that the Commission should step in and avert disaster. That meant stark nationalisation, and that when it had become absolutely impossible for an undertaking to be carried on under private ownership, the Commission should step in and carry it on at the expense of the taxpayer. Captain CROOKSHANK, Secretary to the Mines Department, adverted to the fact that an amendment to the Second Reading of the Bill, which would have made the Commission responsible for the production of coal, had been rejected by a large majority, and urged, in effect, that the matter was, if we may borrow a term with which practitioners are familiar, *res judicata*. Our readers will doubtless entertain widely different views concerning the Coal Bill, both from political standpoints, with which we are not directly concerned, and from considerations of the practicability of the measure; but, whatever opinions concerning the subject may be held, it will be conceded that the first round had ended decidedly in favour of the Government.

**Progress in Planning.**

AT the recent opening of the Town Planning Exhibition by the Woolwich Council of Social Service, the Minister of Health outlined the progress in planning which has been made in recent years in London, in the larger districts of an urban character, and in the country; and as the matter touches at several points subjects of interest to practitioners, both in their professional character and otherwise, it is thought that some indication should be given of the present position. In regard to London, SIR KINGSLEY WOOD deprecated the notion that in face of the gigantic *fait accompli* it was useless to attempt to plan for the future. The rejection of SIR CHRISTOPHER WREN'S plan for rebuilding the city after the Great Fire did not mean that the chance was lost for ever. In the city there were not many buildings more than sixty years old; and who, the speaker asked, could tell what the city might be in another sixty years under the guidance of the City Council? Reference was made to the impetus given to the movement for a green belt round London by the London County Council, to the important highway development survey of Greater London now being made by SIR CHARLES BRESSEY and SIR EDWIN LUTYENS, and to the fact that London local authorities have recently joined together to form a standing committee to consider some of the major problems of planning in London. The speaker urged that it was still possible and practicable to make London a worthier city from the point of view of town planning, and he stated that public opinion was getting stronger every day that further efforts, particularly in relation to proper highway development, should be made.

**Planning in the Provinces.**

WITH regard to the problem outside London, the speaker adverted to the position with reference to the larger towns and to the countryside. As to the former, it was recalled that since the coming into operation of the Town and Country Planning Act, 1932, on 1st April, 1933, most of the larger urban authorities have taken power to prepare a planning scheme for the whole or a greater part of their locality and are now formulating proposals. The progress which had been made towards the completion of schemes in areas of all types was stated to be encouraging, 172 schemes already having been submitted to the Department for approval under the Act of 1932, while another 155 schemes have taken shape locally, and are the subject of local discussion. Progress in the country was indicated with reference to the acreage under control. This amounts to 23,000,000, compared with 9,000,000 when the foregoing Act was passed. Many local authorities, it was said, had joined together in regional committees to secure as far as they could that the country should be properly planned in its relation to the town, and that the disfigurement of natural beauty, so lamentable a characteristic of some of the post-War development, should cease. While the position is not one calling for unqualified optimism, the foregoing review contains matter of satisfaction in that it not only indicates the check which has been placed upon some of the worst kinds of development, but also witnesses to the increasing readiness displayed by local authorities to make use of the machinery placed at their disposal by the Town and Country Planning Act, 1932.

**Income Tax and the Falling Birth-rate.**

IT is not unlikely that many of our readers will have perused with some measure of agreement a recent letter in *The Times*, where the incidence of income tax was considered in light of the falling birth rate. It was urged that of all sections of the community, the income-tax paying classes were the only ones which were positively and successfully discouraged by the State from child-bearing, and the writer roundly asserted that the only way he personally could afford another child without seriously jeopardising the future standard of his present family would be first to divorce his wife. He proposed as a solution the revision of income tax and sur-tax scales and allowances so that in principle a bachelor with a given income would be no better and no worse off than a married man. The writer did not fall into the error commonly committed in this connection of introducing the irrelevant consideration of a reduction of the total returns of this form of impost, and recognised that his proposal would involve an increase in the standard rate in order to balance diminution of returns occasioned by an increased allowance for a wife, and allowances for children which, it was proposed, should be increased sharply when they attained school age. There is much to be said in favour of such suggestions, and we ourselves find it difficult to discover any substantial reason why, for example, marriage should be accompanied by a reduction of the personal allowance which would be claimable by each of the parties (had they requisite income) living separately, while the reduction of the amount payable in tax, owing to allowances for children, are, of course, totally disproportionate to the expense involved. It may be urged that no adjustment of income tax liability would be capable of effecting any real improvement in many cases, but that is no reason why something should not be done to put an end to existing anomalies and why the principle recognised in existing legislation that the demands upon the taxpayer should be regulated with reference to his ability to pay should not be carried further so as to afford more substantial relief to the persons concerned.

**Rules and Orders: County Court.**

THE attention of readers may be briefly drawn to the order recently made by the Lord Chancellor under s. 2 of the County Courts Act, 1934, with reference to county court districts. This, the County Court Districts (Miscellaneous) Order, 1937, is set out in full on p. 1007 of the present issue, and it is therefore unnecessary to indicate here the local changes to be effected thereunder. The order comes into operation on 1st January, 1938.

**Rules and Orders: Public Health (Imported Food).**

SOME allusion was made in these columns in our issue of 22nd May last to the contents of the Public Health (Imported Food) Regulations, 1937, which were made by the Minister of Health in exercise of powers conferred upon him by the Public Health Act, 1875, the Public Health Act, 1890, the Public Health (Regulations as to Food) Act, 1907, and the Public Health (London) Act, 1936. Contemporaneously with

the issue of these regulations an explanatory circular (No. 1522) was published by H.M. Stationery Office, to which reference was also made. As originally drafted, the regulations were to come into force on 1st January, 1938, but recently issued provisional regulations (dated 2nd December, 1937), which, on account of urgency, came into force immediately, provide that 1st April, 1938, shall be substituted for the above mentioned date in the former regulations. The new regulations, which are entitled the Public Health (Imported Food) (Amendment) Regulations, 1937, are published by H.M. Stationery Office, price 1d., while a circular (No. 1666, H.M. Stationery Office, price 1d.) explains that the Minister has found it necessary to postpone, as hereinbefore indicated, the coming into operation of the Public Health (Imported Food) Regulations, 1937.

**Rules and Orders: Unemployment Insurance.**

THE attention of readers may be shortly directed to the notice recently given by Unemployment Insurance Statutory Committee that draft Unemployment Insurance (Insurable Employments) (No. 2) Regulations, 1937, have been submitted by the Minister of Labour under s. 104 of the Unemployment Insurance Act, 1935. Copies of these regulations may be obtained on application to the secretary to the committee, Queen Anne's Chambers, 28, Broadway, London, S.W.1. Objections by or on behalf of persons affected by the draft regulations must be in writing and must state the portions of the draft objected to, the specific grounds of objection, and the omissions, additions or modifications asked for, and such objections must be sent to the secretary on or before 24th December. The committee's report on the draft regulations of a similar character which were submitted on 23rd April of the present year was briefly referred to in this column in our last issue.

**Central Criminal Court: December Session.**

ONE charge of murder and of attempting to commit suicide, one of attempted murder, one of infanticide, and one of manslaughter figure in the list for the December session of the Central Criminal Court which opened on Tuesday. At the beginning of the week there were fifty-nine persons awaiting trial or sentence, so that the calendar for the present month is a comparatively light one. The list also included charges (one each) of robbery while armed, concealment of birth, coining, conspiracy to defraud, fraudulent conversion, and false pretences, two charges of forgery, three each of demanding money with menaces, and stealing, four of breaking and entering, six offences against the Post Office and one offence under the Bankruptcy Act. Cases in the High Court Judge's list are being dealt with by DU PARCQ, J.

**Recent Decisions.**

IN *The Aizkarai Mendi* (*The Times*, 3rd December), the Court of Appeal (GREER, SLESSER and SCOTT, L.JJ., sitting with the Nautical Assessors) upheld a decision of Sir BOYD MERRIMAN, P., sitting with Elder Brethren of the Trinity House, who found that "The Aizkarai Mendi" and "The Boree" were both to blame, in the proportion of four-fifths and one-fifth respectively, for a collision which occurred in fog between them. It was intimated that very strong and convincing evidence would be required to cause the Court of Appeal to interfere with the proportions in which the blame was distributed by the learned President, who had had the advantage of seeing and hearing the witnesses.

In *Yeomans* v. *London Passenger Transport Board* (*The Times*, 3rd December), heard before HAWKE, J., and a common jury, the plaintiff was awarded £5,000 damages for personal injuries sustained by being run into by a tramcar while he was "flagging" a steam roller.

In *Mercantile Bank of India, Ltd.* v. *Central Bank of India, Ltd.* (*The Times*, 4th December), the Judicial Committee of the Privy Council upheld a decision of the Madras High Court which in its appellate jurisdiction had affirmed a decision of that court in its original jurisdiction whereby damages were awarded to the respondents in respect of the conversion of a quantity of ground nuts. Railway receipts relating to consignments of ground nuts upon which a bank had made advances were handed back to the merchant-borrowers to enable them to obtain delivery for storage of the goods in the bank's go-down, but these documents were utilised by the borrowers for the purpose of fraudulently obtaining a further advance on the same goods from another bank. It was held that the former bank in handing back the receipts for this limited purpose was not estopped, by a holding out ostensible authority or otherwise, from setting up its claim with reference to the goods. *Lickbarrow* v. *Mason*, 2 Term Rep. 63, and *Commonwealth Trust Co.* v. *Akotey* [1926] A.C. 72, distinguished: see *Jones, Ltd.* v. *Waring & Gillow* [1926] A.C. 670, 693.

In *Re Nicholson's Settlement: Molony* v. *Nicholson* (*The Times*, 4th December), FARWELL, J., held that a power of appointment over a share in a trust fund had been validly exercised by the appointment of a life interest to the appointor's husband. According to the evidence the appointor had a strong wish to benefit friends in America with whom she had lived for several years. "She found," according to the learned judge, "that she could not do so, and, that being so, she elected to marry and exercise her power of appointment in favour of her husband." There was no suggestion that the appointee was under any obligation, legal or moral, to use the money in any way other than he pleased, and the learned judge declined to hold that there had been a fraud on the power.

In *Turbyfield and Another* v. *Great Western Railway Co.* (p. 1002 of this issue), the plaintiff, suing as administrator under the Law Reform (Miscellaneous Provisions) Act, 1934, was awarded damages for the benefit of his infant daughter's estate in respect of injuries caused to her through the negligent driving of a horse and dray by an employee of the defendants. The child, aged eight, died a few days after, and as a result of, the accident, and damages were awarded, *inter alia*, for deprivation of the normal expectation of life. In awarding £1,500 under this head, GREAVES-LORD, J., adverted to *Rose* v. *Ford* [1937] A.C. 826, and made observations with reference to considerations affecting the appropriate amount in such cases.

Observations on the same subject were made by LEWIS, J., in *Morgan* v. *Scoulding* (*The Times*, 9th December), in awarding £1,000 damages for loss of expectation of life with reference to the plaintiff's son, a motor mechanic, aged 23, who was killed in a collision between his motor cycle and the defendant's motor car. Damages were also recovered under Lord Campbell's Act and in respect of damage to the motor cycle and funeral expenses.

In *Gulbenkian, N. S.* v. *Gulbenkian, D.* (p. 1003 of this issue), LANGTON, J., held on an issue raised in a pending divorce suit filed by a wife against her husband that the latter, when he came of age, had a domicile in England acquired during his minority through his father, and that the evidence, so far from establishing any domicile of choice elsewhere, was strong enough to show that the plaintiff had acquired an English domicile. Rule 7 as to domicile in Dicey's "Conflict of Laws" approved

In *Charing Cross Electricity Supply Co., Ltd.; Brompton and Kensington Electricity Supply Co., Ltd.; Chelsea Electricity Supply Co., Ltd.; Kensington and Knightsbridge Electric Lighting Co., Ltd.; St. James' and Pall Mall Electric Light Co., Ltd.; Westminster Electricity Supply Corporation, Ltd.* (*The Times*, 7th December), SIMONDS, J., sanctioned a scheme for the amalgamation of electricity supply companies and the case was remitted to chambers for the usual directions as to advertisements and notices. The Electricity Supply (No. 2) Act, 1925, had amalgamated the ownership and management of the generating stations, but left the supply in the hands of the above-mentioned separate companies.

## Infant and Hire-Purchase Agreement

THE original and the clearest and most comprehensive statement of the contracts of necessaries for which an infant is liable is to be found in the passage from "Coke upon Littleton," p. 172*a* :—

> "An infant may bind himselfe to pay for his necessary meat, drinke, apparell, necessary physicke, and such other necessaries, and likewise for his good teaching or instruction, whereby he may profit himself afterwards."

To this list must be added contracts of service, if they are, on the whole, in the circumstances of the case, for the infant's benefit. Can an infant be liable upon a *trading contract* which is for his benefit? Does a trading contract belong to those classes of agreement for which an infant may be held bound?

In *Mercantile Union Guarantee Corporation* v. *Ball* [1937] 2 K.B. 498; 81 SOL. J. 478, the plaintiffs sued for £96, being the arrears due under a hire-purchase agreement in respect of a motor lorry, price £666. The defendant, at the date of the contract, was twenty and had for two years carried on the business of a haulage contractor. His Honour Judge Ruegg found that the contract was not for the benefit of the infant and that the defence of infancy succeeded. The plaintiffs appealed.

They said: this contract enabled Ball to earn his only means of livelihood. It was for his benefit and he thereby made increased profits. A motor lorry, they argued, was a "necessary," for it enabled him to earn a living. For the infant it was contended that he could not be bound by a hire-purchase agreement which, by its very nature, was onerous; the transaction, in effect, was a loan to enable him to buy a lorry. Further, he agreed by this contract to be responsible for all risks; this was an ordinary trading contract on which no infant could be liable.

The Court of Appeal (Scott, L.J., Finlay, J.) held: *first*, that this contract was not one of the class by which an infant can be bound, since it was not a contract for "necessaries" within the enumeration of Lord Coke; and *secondly*, that "a contract for a large and expensive lorry on onerous hire-purchase terms was not a contract for the benefit of the infant": per Finlay, J. (at p. 503).

Before dealing with the modern authorities, it will be of interest to refer to two early cases cited in Chitty "Contracts" (1937), 19th ed., at p. 381 (Chap. XIII, *ed.*, W. A. Macfarlane).

In *Tuberville* v. *Whitehouse* (1823), 1 C. & P. 95, 96—an action for groceries bought for the defendant's shop—Hullock, B., intimated that if the defendant was an infant, the evidence would not support the action; "as no action could be maintained for goods supplied to an infant for him to trade with." The learned editors add in a footnote: "It has long been settled that infancy is a good bar to an action for goods sold to an infant for him to trade with."

In *Lowe* v. *Griffith* (1835), 1 Scott 458, 460, it was unsuccessfully sought to make an infant liable for the hire of a house in which he carried on his business of a barber. Counsel there argued that the defendant was bound to exercise his calling for his support and that therefore he might lawfully contract for sufficient place for that purpose. But Tindal, C.J., said: "An infant can neither trade nor contract for the hire of a place for the carrying on of a trade." These authorities would seem decisive of the present appeal a hundred years later.

Now it is true that "education in a trade with a view to making an infant a useful citizen . . . must always have been considered necessary for an infant": *per* Esher, M.R., in *Walter* v. *Everard* [1891] 2 Q.B. 369, 374. But a trading contract is in a class different from a contract for education in a trade. Again, a racing bicycle may be a necessary for an infant apprentice earning 21s. a week and living with his parents: see *Clyde Cycle Co.* v. *Hargreaves* (1898), 78 L.T. 296. But a bicycle for personal use differs from a motor lorry used in a business.

The whole question of trading contracts—even if for the infant's benefit—was carefully considered by a Divisional Court (Phillimore and Bray, JJ.) in *Cowern* v. *Nield* [1912] 2 K.B. 419, 502, and a *dictum* of Bray, J., was expressly approved by the Court of Appeal in *Mercantile Union Guarantee Corporation* v. *Ball*, *supra* :—

> ". . . there is no authority for saying that a trading contract, even if for the benefit of the infant, is an exception to the rule that an infant is not, except in certain cases, liable on contracts made by him."

Nield carried on business as a hay and straw merchant. Cowern, having ordered some hay from him, sent the cheque, but the goods were never delivered. The court held that the price could not be recovered in an action for money had and received.

"An infant is not necessarily liable on a contract," Phillimore, J., observed, "merely because it is for his benefit. . . . The only contracts which, if for the infant's benefit, are enforceable against him are contracts relating to the infant's person, such as contracts for necessaries, food, clothing and lodging, contracts of marriage, and contracts of apprenticeship and service. In my opinion a trading contract does not come within that category" (at p. 422).

Mr. Douglas Hogg (as he then was) cited *Thornton* v. *Illingworth* (1824), 2 B. & C. 824, 826, where Bayley, J., had declared :—

> "In the case of an infant, a contract made for goods, for the purposes of trade, is absolutely void, not voidable only."

There was the more recent *dictum* of Jessel, M.R., in *Ex parte Jones* (1881), 18 Ch. D. 109, 119, 120 :—

> ". . . They (i.e., the goods) were bought for the purpose of selling them again. Therefore there was no common law liability, because an infant could not contract a debt except for necessaries."

Nor was this matter affected by the Infants Relief Act, 1874: s. 1 was perfectly general, applying to all contracts save those expressly excepted "and they cannot be restricted so as not to apply to trade debts" (at p. 122). In that case an infant trader, it was held, could not be made bankrupt in respect of money owing for goods sold and delivered in his business, because he was not, in law, a debtor.

The contract in *Roberts* v. *Gray* [1913] 1 K.B. 520, to go on tour as a professional billiards player, although it appeared, on the face of it, to relate to a joint venture, was held by the Court of Appeal to be a contract for necessaries and one for the infant's education and benefit. The question was one of substance, not of form; in fact, the contract could not be called "a trading contract" but one for instruction on a world-wide tour, part of the career of a distinguished billiards player.

*Doyle* v. *White City Stadium Ltd.* [1935] 1 K.B. 11 must be mentioned as being the most recent case upon the liability of infants in respect of contracts for their benefit. The plaintiff was an infant and a professional boxer, and a contract with the board of control to box at the White City Stadium on the terms that he should receive £5,000, win, lose or withdraw, was held binding on the plaintiff. It was closely connected with his contract of employment and was binding, having regard to the fact that the contract as a whole was for his benefit. The plaintiff, having been disqualified for hitting below the belt, it was held that the board of inquiry was entitled, after inquiry, to withhold the money from him on the ground that he had been so disqualified. The case really proceeded upon the principle of a contract of employment and no question of a trading contract arose, hence the judgments are not really material upon the present inquiry. But one remark of Slesser, L.J., may well be cited upon the argument put forward in the 1937 case that the contract was for the infant's benefit: "it is doubtful," observed the learned Lord Justice, "whether there is a general principle

that if an agreement be for the benefit of the infant it shall bind him" (at pp. 131, 132).

It must be clear from examination both of the older and of the more recent authorities, that even if a trading contract be for the benefit of the infant—and the learned county court judge held otherwise and was upheld by the Court of Appeal in *Mercantile Union Guarantee Corporation* v. *Ball*, *supra*,—an infant is not liable upon such a contract. A contract made by an infant for goods for the purposes of trade is void at common law and is void by statute; it does not belong to the category of a contract for necessaries. The tradesman simply takes his risk. Nor was Jessel, M.R., prepared to say that there was any absurdity or hardship in the rule: *Ex parte Jones* (1881), 18 Ch. D. 109, 120. "There is nothing illegal or improper in an infant's carrying on a trade; thousands of infants do so every day, and the man who deals with an infant on credit, trusts to the infant's honour to pay him, as well as to the fact that it is to the infant's advantage to be able to continue carrying on the trade" (at p. 121).

## Company Law and Practice.

**Some Observations on the Imperial Chemical Case.**

THE appeal against the order confirming the reduction of capital of Imperial Chemical Industries Limited came before the House of Lords over a year ago, and was then dismissed, though their lordships reasoned opinions were not given until March of this year. The report appears in the November issue of the Law Reports ([1937] A.C. 709—*Carruth* v. *Imperial Chemical Industries Limited*) and contains much matter for the consideration of the company lawyer; and I do not propose in this article to discuss all the points which arose in the case. The facts, I imagine, are familiar in general outline at least to my readers, but it will be necessary to state them shortly, though I shall not refer to circumstances which do not seem material for the purposes of this present article.

The company's capital consisted of £95,000,000, divided into 22,727,000 £1 preference shares, 43,767,355 £1 ordinary shares, 21,745,290 10s. deferred shares and a number of unclassified shares. A special resolution was passed to reduce the capital to £89,565,859, by cancelling paid-up capital to the extent of 5s. per share on each of the issued deferred shares and reducing the nominal amount of those shares to 5s. each. A further resolution was passed to the effect that on the reduction being confirmed by the court, the ordinary shares and the deferred shares were to be amalgamated into one class of ordinary shares—that is to say, the deferred shareholders were to become holders of one ordinary share of £1 for every four of their deferred shares. In the upshot, therefore, a deferred shareholder would hold ordinary shares representing one-half in nominal value of his previous holding of deferred shares. Class meetings of the ordinary shareholders and the deferred shareholders respectively passed extraordinary resolutions in accordance with the company's articles, consenting to the reduction and reorganisation of the company's capital. (I am not proposing at this stage to refer to the questions that were raised as to the regularity of these class meetings). Eve, J., confirmed the resolution for the reduction of capital, but certain deferred shareholders appealed, first to the Court of Appeal and then to the House of Lords, but without success. Various points were raised by those who objected to the reduction and reorganisation of capital, but, as I have indicated, I do not propose to mention them all in this article; so far as I can, I shall confine my remarks to the question of the reduction of capital, as such, without considering the attack which was made on various aspects of the procedure adopted in respect of the two class meetings.

The reduction of capital was not one of the usual reductions, in which paid-up share capital has been lost or is unrepresented by available assets or is being returned to the shareholders as being in excess of the wants of the company. It involved simply the cancellation of approximately five and a half millions of paid-up deferred capital—a figure which would enable the reduced deferred shares to be amalgamated with the ordinary shares pound for pound on the basis of one ordinary share for every four deferred shares. Such a reduction, it was urged, was *ultra vires* the company as being unauthorised by its articles. It will be remembered that s. 55 of the Companies Act, 1929, permits a company "if so authorised by its articles," to reduce its share capital in any way, and in particular to extinguish liability in respect of unpaid share capital, to cancel share capital lost or unrepresented by available assets, and to pay off share capital in excess of the wants of the company. (Incidentally several words have dropped out in para. (*b*) of the section as printed on p. 728 of the report.) The relevant article of the company in this case provided that, "the company may by special resolution reduce its capital by paying off capital, cancelling capital which has been lost or is unrepresented by available assets, reducing the liability on the shares, or otherwise, as may seem expedient." It was argued that this article did not empower a reduction by cancelling share capital merely for the purpose of a reorganisation of capital, as it could not fairly be construed to mean that the company was taking power to reduce its capital in any other way than the three ways specifically mentioned. This contention met with no favour; the House of Lords held that under this article the company had power to reduce its capital in any way authorised by the Companies Act, 1929. And the case of *Poole* v. *National Bank of China* [1907] A.C. 229, shows that a reduction of this kind is authorised by the general words of the Act.

The company then had the necessary power to reduce its capital in the manner proposed, but the further objection was taken that the reduction, coupled with the scheme of re-organisation as a whole, operated unfairly to the holders of the deferred shares. The facts and figures relative to the question of fairness do not, I think, concern us so much as the principles on which the court acted in considering the fairness of the proposals, and in this respect it should be borne in mind that in the particular case the court was not, and indeed could not be, asked to approve or confirm the scheme as a whole. The modification of the rights of the different classes of shareholders was effected, or purported to be effected, by the resolutions of the respective class meetings under the provisions of the company's articles, and the court was being asked to confirm, not a scheme of arrangement between the company and its different classes of shareholders, but simply a resolution to reduce the company's capital. Nevertheless, the court, on hearing a petition to confirm a reduction where there are several classes of shares, has to consider the fairness of the proposed reduction. The distinction was put by Lord Maugham in this way; speaking of the deferred shareholder who was appealing, he said: "It was part of the bargain under which he held his deferred shares that their rights might lawfully be altered under [the modification of rights article], and if the extraordinary resolution . . . was passed by the requisite majority and he could not establish that the resolution involved an oppression of the minority . . . the court would have no power to interfere. On the other hand, on the application under s. 55 of the Act to confirm the reduction, the court, whether or not the petition is opposed, has a duty to consider whether the proposed reduction is a fair or an unfair one."

How, then, will the court approach the question of the fairness of a reduction when it has been duly approved by the different classes of shareholders affected, in accordance with an article enabling the rights of a class to be modified with the

approval of that class? Usually, in the absence of any question of fraud or oppression, the court will not interfere with the decision of the shareholders, on the principle (laid down in *In re English, Scottish and Australian Chartered Bank* [1893] 3 Ch. 385, at p. 409) that shareholders acting honestly are much better judges of what is to their commercial advantage than the court can be. In the present case Eve, J., and the Court of Appeal, applied this principle, and would not interfere with the decision of the majorities. In the House of Lords, however, whilst the general principle was approved, the matter was approached rather differently in view of the fact that at the meeting of the deferred shareholders a large number of votes in favour of the scheme were given by persons who were also the holders of ordinary shares, so that that meeting could not have considered the matter with a view to the interests of holders of deferred shares only. In such a case the question of fairness must be determined by the court on the evidence before it. It is not, however, "a matter for the discretion of the learned judge in a technical sense," and the court is not entitled to substitute its own views for those of the directors and experts who give evidence (see *per* Lord Maugham, at p. 770). Further, where the class meeting has duly approved any alteration of rights which may be involved the onus is on those who attack the scheme as unfair.

It will be observed that, as I have put the matter, the particular circumstance that a number of votes were given in favour of the scheme at the meeting of deferred shareholders by holders of that class who also held ordinary shares, required the court's determination of the fairness of the scheme, including the reduction, although the meeting had duly approved it. This, I think, represents the view of Lord Russell of Killowen and Lord Maugham. In Lord Blanesburgh's opinion the fairness of the reduction had to be determined by the court for a quite different reason. It will be well known to my readers that, in the usual case of a reduction of capital on the ground of loss, the burden of the loss falls strictly on those shares which, in accordance with the constitution of the company, rank last for repayment in a winding-up. In the present case, it was apparently assumed by every one, until the matter came before the House of Lords, that this principle equally applied to the reduction, which, as I have indicated, was of an unusual kind, and, consequently, that it was in accordance with strict legal rights that the deferred shareholders should bear the whole of the reduction. The result of this assumption was that the incidence of the reduction had been treated as regular *ab initio*, necessitating, therefore, no sanction of a separate meeting of deferred shareholders. In the House of Lords, however, it was pointed out that in the case of a reduction where no loss has been sustained, the reduction should *primâ facie* in the absence of anything to the contrary in the articles of the company, be borne rateably by all classes of shares. To call upon the deferred shareholders alone to suffer the reduction was of itself a modification of their rights, entailing in the ordinary way a resolution of the deferred shareholders sanctioning such modification. Now we have seen that the deferred shareholders did pass a resolution and, as a matter of construction, this resolution did, in the opinion of Lord Russell and Lord Maugham, sanction the modification involved by the incidence of the reduction. Lord Blanesburgh, on the other hand, held, again as a matter of construction, that the resolution was insufficient for that purpose. (The exact terms of the resolution are not, I think, material for our present purposes.) In his view, therefore, the proposed reduction was irregular and could not be confirmed by the court unless the company could affirmatively establish that the reduction was nevertheless fair and equitable to the deferred shareholders in the return which the latter received under the whole scheme. This, on the evidence, he thought the company had succeeded in doing.

It is rather dangerous to draw general conclusions from cases which depend largely on their particular facts, but I venture to summarise the principles which it appears to me, from a consideration of the case under discussion, the court will act upon in determining the fairness of a reduction of capital as between different classes of shareholders—a matter which, as Lord Maugham said, it has a duty to consider. Where the reduction is not in accordance with the strict legal rights of a particular class, but has been duly sanctioned by a separate meeting of that class in accordance with the company's articles, the court will usually accept the decision of that meeting. If, however, that decision was not made *bonâ fide* for the benefit of those concerned, or if the meeting could not in the circumstances of the case have considered the matter with a view to the interests of the holders of that class of shares only (as where some of such holders hold shares of another class which are favourably affected by the reduction) the court will itself decide the question of fairness on the evidence before it, though the onus of proving unfairness is on those who attack the reduction after the meeting has duly sanctioned the modification of rights. If the reduction is not in accordance with strict legal rights and no separate meeting of the holders of the shares whose rights are prejudiced has approved the variation, the court may still confirm the reduction if the company establishes that it is fair and equitable (see *per* Lord Blanesburgh at p. 744, *British and American Trustee and Finance Corporation* v. *Couper* [1894] A.C. 399). A point which seems to me to remain a little obscure is this: how far will the court, in determining the fairness of a reduction, take into consideration the fairness of the provisions of a scheme in which the reduction is only an incident, when its sanction is being sought to the reduction only and the other provisions of the scheme have been duly adopted by the company and require no approval or confirmation by the court? This question has, I think, two aspects: (A) If the reduction is not, in itself, fair may it nevertheless be confirmed if the provisions of any such scheme compensate for the unfairness? The answer would appear to be yes. (B) If the reduction is fair in itself, will it be relevant to take into consideration the provisions of an accompanying scheme, duly adopted by the company, which may not be fair? Generally speaking, it would seem that the answer to this is no, since the resolutions adopting the scheme can, usually, be challenged by more appropriate procedure than that of opposing the petition to confirm the reduction; as, for example, by an application under s. 61 of the Companies Act.

The other questions which arose in the *Imperial Chemical* case I hope to discuss in a later article.

## A Conveyancer's Diary.

**Fraudulent Exercise of Powers of Appointment.**

A CASE reported in *The Times* for the 4th December, *Re Nicholson's Settlement*, directs attention to the subject of fraudulent exercise of powers of appointment, and what it is necessary to prove in seeking to impeach an appointment on the ground that it is a fraud upon the power.

The facts were that under a settlement a woman was given a power to appoint that a certain proportion of the income of the settled estate should be paid to any husband who might survive her during his life. The donee of the power lived for many years with friends in America and in 1933 was an old lady over eighty years of age. It appeared from the evidence that the donee was desirous of making some provision for the friends with whom she was living and she approached those entitled to the capital of the trust fund after her death with a request that they would release a part of the capital upon her releasing her power of appointment. The parties

refused to accede to that suggestion so the lady married and made an appointment in favour of her husband. The donee continued to live with her friends as before, the husband living apparently at a distance from her place of residence, but there was evidence that they met from time to time after the marriage.

The suggestion, of course, was that the old lady had married and made the appointment in order indirectly to benefit her friends, and relying upon her husband to carry out her wishes in that respect. However, Farwell, J., found that there was no evidence of any agreement on the part of the husband to apply the income in any such way, and the learned judge said "In the case of a power given to appoint to one person only it is impossible to establish fraud unless there is evidence of a bargain between the appointor and the appointee." To prove such a bargain must generally be very difficult if the appointee denies the existence of any such agreement. I take it that the existence of a bargain of that kind could hardly be proved by evidence *ex post facto*. In this case, for example, it may be that the lady's husband is now using the income or some of it, to benefit her friends, but if he assert that he is not doing that in pursuance of a bargain with the appointor, that would not vitiate the appointment. In other words, I do not think that the court will infer a bargain from the subsequent acts of the appointee. If that be so it is manifest that in the case of an appointment to a single person who denies any bargain, there will seldom be any hope of establishing that the appointment was a fraud on the power.

The principle upon which appointments may be impeached as fraudulent is that there is a duty upon the donee to exercise the power only for the benefit of the proper objects of it, and not so as indirectly to benefit others who are not objects.

As I have mentioned, Farwell, J., said that in the case of an appointment to a single individual it was not possible to show fraud unless there were a bargain between the appointee and appointor. That, no doubt, is so, but a bargain need not in every case be proved. In *Vatcher* v. *Paull* [1915] A.C. 372, Lord Parker laid down the law as follows: "The term fraud in connection with frauds on a power does not necessarily denote any conduct on the part of the appointor amounting to fraud in the common law meaning of the term, or any conduct which could properly be termed dishonest or immoral. It merely means that the power has been exercised for a purpose, or with an intention beyond the scope of, or not justified by, the instrument creating the power. Perhaps the most common instance of this is where the exercise is due to some bargain between the appointor and the appointee, whereby the appointor or some other person not an object of the power, is to derive a benefit. But such a bargain is not essential. It is enough that the appointor's purpose and intention are to secure a benefit for himself or some other person not an object of the power."

The facts in that case were that under a marriage settlement a husband and wife had a joint power of appointment over a settled fund among the husband's children, whether by his first or his second marriage. By a joint deed the husband and wife appointed the settled fund in favour of their own family with a proviso that if the issue of the first marriage should abandon their rights in the appointors' real estate in Jersey the appointment should be void. Under the law of Jersey, at that time, no person had any power to alter the devolution of his real estate in accordance with that law.

It was held by the House of Lords that the appointment was good.

The power in that case expressly stated that the appointment would be made "upon such conditions" as the appointors should appoint. If the condition imposed had been such as to defeat the real intent and object of the power, that would no doubt have been a fraud on the power. It is also of importance to note that the condition was not one to be performed by the appointees, but by third parties, and if it were fulfilled by such third parties the result was that the settled funds would simply go as in default of appointment. Lord Parker said with regard to this: "The real view of an appointment on condition that the appointee shall benefit the appointor or a third party is that the power is used, not with the single purpose of benefiting its proper object, but in order to induce the appointee to confer a benefit on a stranger, and obviously this view is absent where the condition is not to be performed by the appointee. Nor is there any case in which a bargain to allow the funds to go as in default of appointment or a condition the non-performance of which will leave the funds to go in default of appointment, has been successfully impeached. The limitations in default of appointment may be looked upon as embodying the primary intention of the donor of the power. To defeat this intention the power must be *bona fide* exercised for the purpose for which it was given. A bargain or condition which leads to the fund going in default of appointment can never therefore defeat the donor's primary intention."

In "Farwell on Powers," 3rd ed., p. 460, the law is summarised as follows: "Appointments may be fraudulent in that they were made (*a*) for a corrupt purpose; or (*b*) in consideration of an antecedent agreement to effect objects not within the scope of the power; or (*c*) for purposes foreign to the power."

The commonest example of (*a*) is where the appointor intends some benefit for himself. For example, an appointment to an object on the understanding that he pays the appointor's debts or gives him a sum of money.

As to (*b*), the same principle applies. An appointment to an object under an arrangement that he is to give part of the appointed fund to some other person, although not benefiting the appointor even indirectly, is none the less fraudulent as not being in compliance with the purpose of the power.

Cases coming under (*c*) are closely allied to the foregoing. *Topham* v. *Duke of Portland*, 11 H.L.C. 32, affords an example. There the donor appointed a double share to a child, and it appeared that one-half of the double share was to be held in trust and the income accumulated during the life of the appointee and twenty-one years afterwards or until the successor to the dukedom should direct such half to be paid to another child who had been excluded on account of an intended marriage of which the appointor did not approve. It was held that the appointment was bad, being used to induce the excluded child not to contract the marriage in question. That was a purpose foreign to the intent of the power.

## Landlord and Tenant Notebook.

**Injunction to Restrain Distress.**

REPORTED cases in which a tenant has sought an injunction to restrain distress are few. There can be no doubt that, while distress is a legal or extra-legal remedy, injunctions will be granted when its abuse can be established: it is a proceeding which may occasion much discomfort and embarrassment even if actionable, and successive Rent Restrictions Acts have recognised this fact by making leave of the county court a condition precedent to distraining on property within their ambit. Similar considerations may explain the protection afforded to companies in liquidation, or to their creditors.

Consequently, it is not surprising that the only cases, if not the only case, in which a motion for an injunction has been reported as such, show or shows the distrainee as coming off second best. Relief was granted, but on most unattractive conditions. The governing principle was expressed by Lord Cottenham, L.C., in *Sanxter* v. *Foster* (1841), 1 Cr. & P. 302,

as follows: "The court ought not to interfere for the purpose of preventing a party from enforcing a legal claim, without securing to itself the means of putting him in the same position, in the event of his turning out to be right, as if the court had not interfered." The plaintiff's grievance in that case was that he had accepted a lease which he believed to accord with an agreement for a lease, but the latter did not, and the former did, provide for penal rent in certain events. So the plaintiff commenced an action for rectification and moved for an injunction to restrain the defendant from suing or distraining. This was granted at first instance, but discharged by the Lord Chancellor, who said that, in view of the conflict of the evidence apparent in the affidavits, it should never have issued. The reason, however, was the difficulty of fixing the security; one which is overcome nowadays, at all events, by stipulating for payment into court.

The decision in *Shaw* v. *Earl of Jersey* (1879), 4 C.P.D. 120, illustrated the effect of the provision in the first of the Judicature Acts authorising the grant of an injunction "upon such terms and conditions as the court shall think fit." A question arose as to the construction of the terms of a mining lease, which provided for additional rent in respect of blast furnaces to be erected on the premises (they had been erected but pulled down). After two distresses, the plaintiffs brought actions for wrongful and for excess distress; a special case was stated, and the plaintiffs now sought an injunction, until its determination, to prevent any further levy. Lord Coleridge, C.J., did not consider it just to restrain the landlord without ensuring that he should have his rent, if entitled to it, so he and Denman, J., made it a condition that the rent should be brought into court within a fortnight. The Court of Appeal—4 C.P.D. 359—upheld this decision: this, said Thesiger, L.J., was not a case of interfering with an ascertained legal right, and the order made was fair to both parties and proper to be made at that stage of the proceedings.

The well-known case of *Walsh* v. *Lonsdale* (1882), 21 Ch. D. 9, C.A., showed us the effects of the fusion of law and equity *via* a motion for an interlocutory injunction to prevent a landlord from selling distress and continuing in possession, made in an intending tenant's action for specific performance. The agreement provided for forehand rent, the amount of which should depend on the number of looms run in the demised premises, but also stipulated for a minimum number of such looms. The argument that no distress could be levied because there was no legal tenancy and no fixed rent was rejected in the light of the Judicature Acts, and at first instance the injunction asked for was granted on condition that the tenant paid into court the amount distrained for, which had been calculated on the assumption that the number of looms run in the past (which exceeded the specified minimum) would continue to operate during the following period. On appeal, this figure was reduced to an amount representing the minimum rent which would be payable under the lease if granted.

The position had, apart from this question of law and equity, in the meantime been gone into in *Carter* v. *Salmon* (1880), 43 L.T. 490, C.A., when the tenant's *primâ facie* case was indeed a weak one. He had taken a farm, at £450 plus £50 a year for each field ploughed, payable half-yearly, under an elaborate and detailed agreement for a (yearly) tenancy, which specified very clearly that the then landlord was to effect certain repairs, after which the plaintiff became responsible for the condition of the buildings. A few months later the landlord mortgaged the property to the defendant, his solicitor. When rent became due, the tenant alleged that he and the landlord had verbally agreed that none was to be payable until the repairs to be executed by the latter had been effected, and this had not been done. Another gale of rent became due before the mortgagee took steps to enforce his rights, which he then did by distraining. The plaintiff immediately commenced proceedings for wrongful distress and trespass, joining the original landlord later, and then moving for an interlocutory injunction. The order he got was that the motion should stand over for ten days; if within that time he did not pay £300 into court, it should be dismissed; if he did make the payment, an injunction against distress should remain in force till the hearing of the action; he was to be at liberty to sell sufficient stock to produce £300 provided he left enough to satisfy the balance of the amount distrained for. The plaintiff appealed at once, and in support of his motion various authorities were cited to show that a tenant has or may have a right to set off a claim against rent, and to set off an equitable claim against a legal one. But, in view of the fact that his claim rested on an alleged verbal agreement which entirely contradicted the written one, the Court of Appeal could do nothing for him. It was also pointed out that the claim would be a personal one against the original lessor, and that there was no notice of any equities to the mortgagee.

## Our County Court Letter.

### THE REMUNERATION OF ESTATE AGENTS.

In the recent case of *Cooper* v. *Hall-Gray*, at Bury St. Edmunds County Court, the claim was for £6 2s. as money paid for and on behalf of the defendant. The counter-claim was for £5 as money paid as a deposit on the proposed purchase of a business. The plaintiff had negotiated the sale of a general store to the defendant, and had paid £4 as an inspection fee to a freehold land society, the proposed mortgagees. The loan was refused, and the plaintiff then paid £2 2s. as an inspection fee to a building society, who agreed to advance £500. The defendant, however, refused to complete, alleging misrepresentation in regard to the takings of the business. His Honour Judge Hildesley, K.C., observed that any claim for misrepresentation against the vendor of the business would have failed on the books produced. Even if there had been any misrepresentation, however, it was not made by the plaintiff, who was entitled to judgment on the claim and counter-claim, with costs. The deposit was only held by the plaintiff as stakeholder, and the defendant's claim thereto could not be investigated in the absence of the third party.

### COMPULSORY WINDING UP.

In a recent case at Leeds County Court, viz., *In re Drakes (Dyers and Cleaners), Ltd.*, an execution creditor for £39 applied for a winding up order. The nominal capital was £500, divided into 500 £1 shares, but only £8 was paid up. The objects were to do dyeing and cleaning of clothes, hats, carpets, etc. The creditors' claims were believed to amount to £2,825 and it was alleged that the company was insolvent and unable to pay its debts, so that it was just and equitable that it be wound up. The petition was supported by a creditor for £396, but was opposed by ten creditors, whose claims amounted to £1,507. Their case was that they had each invested £150 in the company, in order to secure employment, and, as the consideration had failed, they would be entitled to support the petition. Negotiations were in progress, however, for the business to be taken over by another company, and it was important that liquidation should not supervene. His Honour Judge Stewart held that the affairs of the company required investigation by the court, and an order for compulsory winding up was accordingly made.

### HIRE PURCHASE OF CLUB PIANOS.

In the recent case of *Miller & Sons, Ltd.* v. *King*, at Cambridge County Court, the claim was for £46 15s. 10d., as the balance due on the hire-purchase of a piano and other musical instruments. The case for the plaintiffs was that they had supplied the articles to the defendant as treasurer of the Quinquaginta Club, in which capacity he had signed the hire-purchase

agreement. The plaintiffs had once dealt with the affairs of the club, and had deputed the defendant, who was then in their employ, as manager. About ten or fifteen years ago the defendant had left the plaintiffs' employ and had managed the club's affairs himself. The plaintiffs, however, had always looked to him for payment, as credit was not given to undergraduates' clubs. The defendant's case was that the club had existed for nearly twenty-nine years, and no question of its credit had ever arisen. He was not a member of the university and could not be a member of the club. He had signed the hire-purchase agreement as agent, without intending to incur personal liability. The debts were incurred by the members, either individually or as an association, and the defendant—although he had signed cheques and other documents—was only a paid employee. His Honour Judge Farrant gave judgment for the defendant, with costs.

### INJURIES FROM BULL.

In *Brennand* v. *Parrott*, recently heard at New Mills County Court, the claim was for £50, as damages for injuries received at Chapel-en-le-Frith cattle market. The plaintiff's case was that the defendant brought a bull to market, and unloaded it with only a halter attached instead of a pole or a ring through its nose. The bull was not got into the bull-room, and injured the plaintiff, who was in bed over a week. The defendant's case was that he had not loosed the rope, and the bull had a halter over its horns and nose. It was being pulled into the bull-house when it caught the plaintiff. His Honour Judge Longson gave judgment for the plaintiff for £25, and costs. It is to be noted that if a bull, not known to be vicious, attacks a cow in an auction yard, the owner is not liable. See *Hinckes* v. *Harris* (1921), 65 Sol. J. 781.

## Reviews.

"*Punch*" *Almanack*, 1938. Price 1s.

The 1938 edition of this popular almanack is, as usual, extraordinarily good value for a shilling. It is not an almanack to be glanced at; it must be lazed over, savoured, read and enjoyed in tranquillity. There are the usual sixteen pages in colour, and twenty-three of black-and-white drawings, besides a generous allowance of illustrated stories, articles and verse.

### Books Received.

*Slater's Mercantile Law*. Tenth Edition, 1937. By R. W. Holland, O.B.E., M.A., M.Sc., LL.D., of the Middle Temple, Barrister-at-Law, and R. H. Code Holland, B.A. (Lond.), of the Middle Temple, Barrister-at-Law. Demy 8vo. pp. xliv and (with Index) 652. London: Sir Isaac Pitman & Sons, Ltd. 7s. 6d. net.

## Obituary.

### Mr. J. O. M. MORIARTY.

Mr. John Oliver Mayo Moriarty, solicitor, a member of the firm of Messrs. Bond, Pearce, Thomson & Pearce, of Plymouth, died on Friday, 26th November. Mr. Moriarty was admitted a solicitor in 1924.

### Mr. S. M. W. SHEPPARD.

Mr. Stuart Morton Winter Sheppard, solicitor, a partner in the firm of Messrs. Boyce, Evans & Sheppard, of Stratford Place, W., died on Friday, 19th November, at the age of forty-two. Mr. Sheppard was educated at Felsted, and served his articles with Mr. H. Byard Sheppard, of Taunton, and Messrs. Ellis, Peirs & Co., of London. He was admitted a solicitor in 1922, and joined the firm of Messrs. Boyce and Evans, as professional assistant. He became a partner in 1926.

## To-day and Yesterday.

Legal Calendar.

6 December.—On the 6th December, 1771, six Jews were tried at the Old Bailey for the murder of a servant, shot dead while their gang was carrying out the burglary of a farm in the King's Road, Chelsea. They had forced their way in, ill-treated everyone they found and carried off a great quantity of goods. One of the chief witnesses against them was Solomon Lazarus, the receiver, who had bought the booty. Four were convicted and two acquitted. The Recorder prefaced the death sentence "with a judicious and just compliment to the principal Jews for their very laudable conduct in the course of this prosecution and hoped that no person would ignorantly stigmatize a whole nation for the villainies of a few."

7 December.—Mr. William Belt, a respectable Chancery barrister, was unfortunately rather irascible. One day in 1873 as he was returning to his chambers after lunch two young men collided with him. An angry altercation ensued and he asked a policeman to take their names. The young men said he was drunk, and so infuriated did his manner become that a score of urchins gathered round and took up the cry. Thereupon the constable seized him and marched him off to the police station, where he was charged and kept in a filthy cell for several hours, being refused medical inspection or communication with his friends. Next day at Bow Street the charge was dismissed. On the 7th December an inquiry into the conduct of the police was held, resulting in some forcible reflections on them.

8 December.—In 1777, when the Thames was still a highway, the boatmen seem to have been harder to deal with than modern taxi-drivers. One day some gentlemen took the boat of a waterman named Holderness, and told him to row down-stream. He refused, there was an altercation, and in the end he deliberately rocked the boat so as to sink it in fourteen feet of water. On the 8th December he was tried at Westminster Guildhall, and sentenced to a year in Newgate, but the prosecutor pitying his family got the term reduced to three months.

9 December.—On the 9th December, 1921, Lord Lindley died at his home near Norwich within two days of Lord Halsbury.

10 December.—On the 10th December, 1891, two little boys, aged eight and nine, their heads scarcely appearing above the level of the dock, stood before Lawrence, J., at the Liverpool Assizes on a charge of murder. One of them had been sent to bed by his mother as a punishment, his clothes being confiscated. While she was away he had gone out almost naked, later returning fully dressed. He and a friend had taken another boy of seven to a ruined building with water in the cellar where they had stripped and drowned him. They were acquitted on the ground of their youth.

11 December.—William Cadman, a fifty-four year old commercial traveller, who was sentenced at the Old Bailey on the 11th December, 1895, to seven years' penal servitude, must come pretty near to holding the English record for polygamy. It appeared that he had gone through the form of marriage with at least five women, and was the father of twenty-three children.

12 December.—On the 12th December, 1890, the funeral of Mr. Baron Huddleston, the last judge appointed to the Old Court of Exchequer, took place. He was cremated at Woking, whither a special train bore his remains through the winter fog, and there they were cremated. Mr. Justice Mathew did not attend because, as he said, the late judge had "decided to go off in flames." Huddleston's very keen social ambition would have been delighted at the tribute of a wreath from the Prince of Wales.

THE WEEK'S PERSONALITY.

In 1921, within the space of a few days, the English legal world lost its two most remarkable veterans, Lord Lindley and Lord Halsbury, called to the Bar in the same year, 1850. But a special historical interest attached to the death of the former, for he was the last survivor of the ancient Order of the Coif, and the last judge who had sat in the old Court of Exchequer Chamber before the Judicature Act swept it away. One of the most extraordinary things about him was his versatility. A Chancery leader in practice, he had been appointed a Justice of the Common Pleas, adapting himself without the slightest effort to that position, and later to the Mastership of the Rolls and a seat in the House of Lords. "Whether dealing with a one-man company or the right of houses to support or Stock Exchange gambling, or the eccentricities of the River Ouse, or peaceful pickets, he was at home with his subject. Nothing seemed simpler. He merely stated the facts correctly and applied the principles of law." Such almost automatic efficiency joined with an old-time equity lawyer's reverence for case law did not make for the popular conception of a picturesque personality, but his genial homliness, his friendly courtesy to the Bar, and his genuine humility made him one of the greatest of the Victorian judges.

A SERIOUS-MINDED MAN.

I was surprised to learn the other day that Clapham (of Clapham and Dwyer) was a barrister's clerk, and in his time served Greer, L.J., and McCardie, J. It was in the crypt of the Law Courts that he met Dwyer. A highly developed sense of humour is rare in his former calling, probably because barrister's clerks usually take themselves so very seriously. Sir Harold Morris, K.C., had a tale of how he once tested the sense of humour of one of his clerks with a plain ordinary chestnut which he thought he might enjoy. It was the one about the man who had been advised by a friend to kiss his wife when he went home. He did so, but she burst into tears, exclaiming: "Everything has gone wrong to-day. I sent Annie out to buy a haddock and she dropped the shilling down a gutter. I put on Tommy's new suit and he covered it with mud, and now you've come home drunk." The clerk neither smiled nor said "I've heard that one before." There was a long silence of apparent thought. Then he suggested "She niffed his breath, I suppose."

A CORRECTION FROM THE DOCK.

A certain Recorder recently figured in a pleasantly unusual scene when, having sentenced a man to one year's hard labour and one year's penal servitude, to run consecutively, he was reminded by the prisoner that one year's penal servitude was a legal impossibility. The situation is somewhat reminiscent of an occasion when Mr. Justice Ridley, whose brother was at the time Home Secretary, had a prisoner before him whose face seemed familiar. On studying the man's record he found that only a few months earlier he had sentenced him to a long term of penal servitude. "What is the meaning of this?" he demanded angrily, and the offender replied: "Why, my lord, yer see I was released by your brother, the 'Ome Secretary 'oo said as 'ow I'd got a very improper sentence." Ridley, J., was not regarded as a very good judge, but with this prisoner at any rate, he seems to have known better than his brother.

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Mr. Jonathan Knowles, solicitor, of Bingley and of Bradford, left estate of the gross value of £42,322, with net personalty £40,446. He left £100 to the Solicitors' Benevolent Fund; £100 to All Saints' Parish Church, Bingley, Fabric Fund; £50 to the matron of the Bradford Incorporated Nurses' Institution, for the purchase of furniture for the nurses' sitting-room or otherwise in providing for the comfort of the nurses.

# "APPEALS" WHICH SHOULD NOT BE DISMISSED.

IT is our custom to call attention at this season of the year to the appeals made by organised charitable institutions. Our efforts in the past have, we hope, met with some success, and we are therefore making our Special Appeal as before. The following are a few excellent examples of the many deserving institutions badly in need of support:—

Brompton Hospital for Consumption and Diseases of the Chest, S.W.3, is doing world-renowned work in reducing the heavy toll of tuberculosis. "Brompton" trained men are combating this disease throughout the world. There are 500 beds at the hospital, and £90,000 is needed annually for maintenance.

Anything that can be done to forward the efforts now being made by The Royal Cancer Hospital to give hope to those suffering from cancer by providing treatment and a possible cure is surely more than worth while. To those who have intimate knowledge of the suffering and despair caused by the disease it must appear nothing short of a tragedy that the beneficent work of those engaged in dealing with it should be hampered through lack of the necessary funds to enable them to carry on. Donations should be sent to the Secretary, The Royal Cancer Hospital (Free), Fulham Road, S.W.3. Many of the leading institutions engaged in cancer research receive support from the British Empire Cancer Campaign, and financial assistance to help maintain the vital work of this organisation will be gratefully received by the hon. treasurer, 11, Grosvenor Crescent, S.W.1. Help is also urgently needed by the Imperial Cancer Research Fund, of Queen Square, W.C.1, and by the National Society for Cancer Relief, of 47, Queen Victoria Street, S.W.1.

Bequests, donations and annual subscriptions are required by the Princess Louise Hospital for Children, of St. Quintin Avenue, W.10, and by the Hospital for Sick Children, of Great Ormond Street, W.C.1, to assist them in their great work of caring for the health of the children.

Guy's Hospital, of London Bridge, S.E.1, needs help. Over and above the income from its endowments, the hospital is dependent upon support from other sources for general purposes to the extent of over £130,000 per annum. At St. John's Hospital for Diseases of the Skin, Lisle Street, Leicester Square, W.C.2, over 1,000 cases are treated every week at the out-patient department. The hospital has no endowment, and urgently needs assistance.

These are, of course, only a few of the hospitals requiring help, and we have not sufficient space to refer to them all specifically. We feel, however, that the following should not be forgotten: The National Hospital, Queen Square, W.C.1, Westminster Hospital, S.W.1, and the Hospital for Epilepsy and Paralysis, Maida Vale, W.9.

King Edward's Hospital Fund for London receives subscriptions, donations and legacies for distribution among the London Voluntary Hospitals. The Fund holds inquiries, publishes reports, and helps the hospitals in other ways in which the co-operation and influence of an experienced central body may be of use. Subscriptions should be addressed to the Fund at Box 465A, 10, Old Jewry, E.C.2.

The Royal Surgical Aid Society, which was established in 1862 to supply spinal supports, leg instruments, artificial limbs, etc., has supplied over 1,590,000 appliances to the poor. Donations will be gratefully received by the Secretary at the offices of the Society, Salisbury Square, Fleet Street, E.C.4.

The welfare of the blind and the deaf makes a constant demand upon the generosity of those more fortunate members of the community. Assistance is needed by the National Library for the Blind, of 35, Great Smith Street, S.W.1, which produces books and lends them free to blind readers,

and by the National Institute for the Deaf, of 105, Gower Street, W.C.1. Although it is twenty-two years since St. Dunstan's, of Regent's Park, N.W.1, was founded, it still looks after nearly 2,000 war-blinded men.

There are many deserving charities whose main object is child welfare, and of these Spurgeon's Orphan Homes, of Clapham Road, Stockwell, S.W.9, gives necessitous boys and girls the benefits of educational advantages and religious training. Motherless as well as fatherless children are now received at these Homes. Donations will be welcomed by the Secretary at the above address.

The Royal Soldiers' Daughters' Home attends to the maintenance, clothing and education of daughters of soldiers, whether they are orphans or not. The children are trained for domestic service and in special cases for trades. Annual subscriptions and donations should be sent to the Secretary at the Home, 65, Rosslyn Hill, Hampstead, N.W.3.

There are 4,700 children now in the care of the Waifs and Strays Society. Bequests are needed to help to carry forward this national work for homeless, crippled, and destitute little ones. They should be made to the Church of England Incorporated Society for providing Homes for Waifs and Strays, Old Town Hall, Kennington, S.E.11.

At Dr. Barnardo's Homes there are always over 8,000 boys and girls, but in spite of the size of this family help is never refused to any newcomer. Donations should be sent to Dr. Barnardo's Homes, 18–26, Stepney Causeway, E.1.

Among other deserving institutions of this nature which are in need of assistance are the Shaftesbury Society, of John Kirk House, 32, John Street, W.C.1, the London Orphan School and Royal British Orphan School, of Watford (offices at 15, St. Helen's Place, Bishopsgate, E.C.3), and the N.S.P.C.C., of Victory House, Leicester Square, W.C.2.

The Church Army and The Salvation Army are in need of support to enable them to carry on their work. Donations should be sent to Preb. Carlile, C.H., D.D., Hon. Chief Secretary, 55, Bryanston Street, W.1, and to 101, Queen Victoria Street, E.C.4, respectively.

The British Sailors' Society continues its work of providing home and overseas rest for sailors, and caring for their widows and orphans. Donations would be welcomed and should be addressed to the Society's headquarters, 680, Commercial Road, E.14.

An appeal for donations is also made on behalf of Earl Haig's British Legion Appeal Fund. They should be sent to the organising Secretary, Captain W. G. Willcox, M.B.E., Haig House, 29, Cromwell Road, S.W.7.

The Distressed Gentlefolks' Aid Association, of 74, Brook Green, W.6, was formed for the relief of gentlepeople, who, owing to various causes are in deep distress, and in many cases, are on the verge of starvation. The Association makes weekly grants to 360 of its necessitous cases and also supplies clothing, blankets and invalid comforts, but, unfortunately, the work is restricted owing to lack of funds, and they appeal for help that some warmth, comfort and a little of the Christmas spirit may be brought into these sad lives. Assistance is also required by Miss Smallwood's Society for the Assistance of Ladies in Reduced Circumstances, Lancaster House, Malvern, and by the National Benevolent Institution, 1, Woburn Square, W.C.1..

Support is also needed by The Central Discharged Prisoners' Aid Society, of 56–8, Whitcomb Street, Leicester Square, W.C.2, to assist in carrying on its task of caring for discharged prisoners and dependants of those serving sentences.

Last year the British and Foreign Bible Society issued 11,343,948 copies of the Scriptures—1,040,025 Bibles, 1,246,743 New Testaments, and 9,057,180 Portions—in many hundreds of languages. This immense circulation, exceeded on only four previous occasions, shows that the demand is both insistent and widespread. An increase in contributions is required, and these should be sent to the Secretaries, at Bible House, 146, Queen Victoria Street, E.C.4.

Financial assistance is also required by the People's Dispensary for Sick Animals in its good work. Donations should be sent to 14, Clifford Street, New Bond Street, W.1.

Finally, there are those organisations the objects of which are most directly concerned with members of the legal profession. Of these, The Law Association, 3, Gray's Inn Place, W.C.1, and The Solicitors' Benevolent Association, Clifford's Inn, Fleet Street, E.C.4, would be grateful for any assistance, however small.

The above are obviously only a few of the many and varied charitable organisations urgently in need of funds, but we hope that perhaps this short notice of them may assist readers who desire, at this season of the year, to make some small contribution to the happiness and welfare of those less fortunate than themselves.

# Notes of Cases.

## Judicial Committee of the Privy Council.

**Commissioner of Income Tax, Punjab** *v.* **Nawal Kishore-Kharatai Lal.**

Lord Thankerton, Sir Shadi Lal and Sir George Rankin. 9th November, 1937.

India—Revenue—Income Tax—Person Assessed as Agent of Non-Resident—Procedure—Indian Income Tax Act (Act. XI of 1922), ss. 22, 34, 42, 43.

Appeal from a decision of the High Court at Lahore.

The respondent firm were assessed to income tax for the year 1926–27 as agents for a person residing outside British India, under s. 23 (3) read with s. 34 of the Indian Income Tax Act, 1922. Section 34 provides that, where profits or gains have escaped assessment in any year, a notice of assessment in respect of them may be served within a year of the end of that year. By s. 42, where income in British India arises to a person residing outside it, that person is chargeable to tax in respect of the income in the name of his agent. By s. 43, any person in British India through whom the non-resident receives the income is deemed to be the agent of the non-resident, but before being so deemed he must be given an opportunity of being heard as to his liability. On the 2nd February, 1928, the income tax officer at Delhi served the respondents with notice, under s. 43, to show cause why they should not be treated as agents of a certain non-resident for assessment purposes. The notice did not specify the year in respect of which it was proposed to make an assessment. On the 13th, the officer recorded simply that he had heard the firm and that he had served them with the necessary notices under s. 22 (2) of the Act as agents of the non-resident to make a return of income. The respondents appealed against that order to the Assistant Commissioner, who decided that the income tax officer's order of the 13th February did not purport to decide that the respondents were agents of the non-resident. On the 8th May, 1931, the income tax officer having heard objections, made an order adjudging that the respondents were agents of the non-resident, and in June the assessment order now appealed from was made. The High Court decided that the fact that the Assistant Commissioner had, on 2nd May, 1928, made an order that the tax officer had not on 13th February, 1928, pronounced the respondents to be agents of the non-resident was binding on the revenue authorities, with the result that the notice of that date to the respondents to make the return of income as agents was invalid; that invalid notice being the only one ever served on the respondents, the assessment made in 1931 was out of time under s. 34.

Sir GEORGE RANKIN, giving the judgment of the Board, said that it was not necessary to the validity of a notice calling for a return of income under s. 22 (2), where it was served on a person as agent of a non-resident under s. 43, that it should have been preceded either by the notice of intention to treat the assessee as an agent prescribed by s. 43, or by the notice declaring that he was such an agent. It might well be thought advisable that information afforded by a return of income should be available for the purpose of deciding as to agency. It was open to the income tax officer under the Act to postpone any final determination of the question of agency until the time came to make a final assessment under s. 23. The notice of the 13th February, 1928, was, therefore, valid, and was within a year of the end of the year 1926-27. Further, their lordships held that it was not necessary to specify the year of assessment in the notice under s. 43 to the assessee to show cause against being treated as an agent. If by notice to make a return given in due course under s. 22 (2) the year were specified, the assessee had no grievance in point of procedure and could make his case upon the merits. The appeal must be allowed.

COUNSEL: *A. M. Dunne*, K.C., and *Hubert Hull*, for the appellant; *L. de Gruyther*, K.C., and *S. Hyam*, for the respondents.

SOLICITORS: *Solicitor, India Office*; *Sanderson, Lee & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## Court of Appeal.

### *In re* Two Solicitors.

Greer and Scott, L.JJ., and Luxmoore, J.
22nd November, 1937.

SOLICITOR—DISCIPLINARY COMMITTEE—APPLICATION THAT THEY SHOULD BE CALLED ON TO ANSWER CERTAIN ALLEGATIONS—DISMISSAL WITHOUT HEARING—APPEAL TO DIVISIONAL COURT—RIGHT OF APPLICANT TO APPEAR WITHOUT COUNSEL—SOLICITORS ACT, 1932 (22 & 23 Geo. 5, c. 37), ss. 5, 8—SOLICITORS ACT (DISCIPLINARY) RULES, 1932 (S.R. & O. 1932, No. 983), r. 2.

Appeal from the King's Bench Division.

In October, 1936, the applicant applied under s. 5 (1) (*b*) of the Solicitors Act, 1932, to the Disciplinary Committee of The Law Society asking that two solicitors should be required to answer certain allegations in an affidavit sworn by her. In November, the committee considered the application in the absence of the applicant and without communicating with the solicitors. They held that no *primâ facie* case had been shown and dismissed the application. The applicant served a notice of motion on the Registrar of Solicitors to be heard by way of appeal, seeking an order that the solicitors should be required to answer the allegations and that the committee should hear and determine them. On three occasions the motion was adjourned owing to the illness of the applicant's counsel. Finally, the Divisional Court refusing a further adjournment dismissed the appeal, holding that in such proceedings in the High Court the applicant could not be heard in person. The applicant appealed. In both appeals the sole respondent was the Registrar of Solicitors.

GREER, L.J., in giving judgment, said that r. 2 of the Solicitors Act (Disciplinary) Rules, 1932, seemed to require that both the applicant and the solicitor should be present at the consideration by the committee, because neither could ask for a formal order dismissing the application if they were not present. The applicant was entitled to be heard on the question whether she had made out a *primâ facie* case. In dismissing the application without hearing the applicant, the committee were acting contrary to natural justice, which required that she should have an opportunity of supporting the application. The rules did not justify what the committee did, and any rule purporting to do so would be *ultra vires*. The appeal to the Divisional Court had been dismissed solely on the ground that the appellant could not be heard in person. This was wrong. However, the Court of Appeal could dismiss this appeal on the ground that if the Divisional Court had heard the applicant and read her affidavit they would have been bound to dismiss the appeal. On the question whether an appellant from an order of the committee must appear by counsel, his lordship said that the Solicitors Act, 1932, s. 8, reproduced a provision in the Solicitors' Act, 1919. Before that Act the committee could not make an order against a solicitor with reference to charges of misconduct, but had to report to the High Court, which decided whether any order should be made. In *Ex parte Incorporated Law Society* [1903] 1 K.B. 857, following *Ex parte Pitt*, 2 Dow. 439, the complainant could only be heard by a member of the Bar. The practice could not now be overruled, but the court could hold that this rule had no application to the hearing of an appeal from an order by the Disciplinary Committee under the Solicitors Act, 1932. On an appeal from such an order, the appellant could appear in person. That was a fundamental rule of justice which applied to all appeals. But inasmuch as the Divisional Court, if they had heard the appellant, would of necessity have dismissed her appeal, this appeal should be dismissed (1) because the two solicitors had not been served with notice of the appeal, and (2) because the affidavit did not establish a *primâ facie* case.

SCOTT, L.J., and LUXMOORE, J., agreed, but considered that r. 2 of the rules purported to authorise the committee to dispense with any hearing and to that extent was *ultra vires*.

COUNSEL: *Share*; *W. Andrew*.

SOLICITORS: *Gassman & Gassman*; *Registrar of Solicitors*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

### Davies *v.* Elmslie.

Greer, Slesser and Scott, L.JJ. 23rd November, 1937.

CONTRACT—PUBLIC POLICY—ALLEGED AGREEMENT TO PAY WIFE ALLOWANCE DURING HUSBAND'S ABSENCE ABROAD—FOREGOING HIS CONSORTIUM—NO EVIDENCE AS TO MOTIVE—WIFE WILLING TO REJOIN HUSBAND—VALIDITY OF AGREEMENT.

Appeal from a decision of Lewis, J. (81 SOL. J. 865).

In an action for breach of contract the plaintiff, a married woman, claimed £32 arrears of an allowance payable to her under "an agreement whereby in consideration of the plaintiff persuading her husband to go to New Zealand and/or consenting to forego the consortium of her said husband, the defendant promised to pay to the plaintiff an allowance at the rate of £4 per week until either the defendant should pay the plaintiff's passage to join her said husband in New Zealand or the defendant should pay her said husband's passage back to England." The statement of claim said that the agreement, partly oral and partly in writing, was made in January, 1936, that the plaintiff persuaded her husband to go, that he sailed on the 20th January, 1936, and that she had ever since forgone his consortium. It further alleged that the payments had ceased in January, 1937, and that she was and had always been ready to join him. The defendant having alleged in his defence that the contract was void and contrary to public policy as being founded on an illegal consideration, this point of law was set down for hearing before the trial of the issues of fact under R.S.C. Ord. XXV, r. 2. Lewis, J., refused to hold that the contract apart from the facts was void as being contrary to public policy.

GREER, L.J., dismissing the defendant's appeal, said that the order under Ord. XXV, r. 2, should never have been made. His lordship read the passage in the statement of claim as meaning that, in consideration of the plaintiff persuading her husband to go the defendant promised to pay her an allowance until either he should pay her passage to join her husband or her husband's passage to return to England. In that light,

so far from being a contract to deprive the husband of his wife's consortium, it was consistent with the spouses remaining on the best of terms. The words "consenting to forego the consortium of her said husband," amounted only to the pleader's way of indicating what construction might by some possibility be put on the agreement set out and not as indicating that the consideration for the contract was loss of consortium. If that had been the consideration for the promise, the result of the appeal would have been different.

SLESSER and SCOTT, L.JJ., agreed.

COUNSEL: *Willes* and *Hignett*, for the appellant; *Sir Reginald Coventry*, K.C., and *W. Andrew*, for the respondent.

SOLICITORS: *Peacock & Goddard*, for *Shakespeare & Vernon*, of Birmingham; *Piesse & Sons*, for *B. D. J. Hayes*, of Shrewsbury.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## Appeals from County Courts.

### Purvis *v.* Goole Steam Shipping (L.M.S.) Co.

Greene, M.R., Romer and MacKinnon, L.JJ.
4th November, 1937.

WORKMEN'S COMPENSATION — INJURY BY ACCIDENT — INCAPACITY—REFUSAL TO UNDERGO OPERATION—NO REQUEST BY EMPLOYERS—WHETHER CONDUCT UNREASONABLE.

Appeal from Goole County Court.

A workman having suffered an accident giving rise to a hernia claimed compensation under the Workmen's Compensation Acts. Though advised by his medical attendant to undergo a surgical operation, he did not do so. His employers contended that his incapacity resulted from this refusal, and that it was unreasonable. His Honour Judge Sir Reginald Banks, K.C., so found and held that he was not entitled to compensation.

GREENE, M.R., dismissing the workman's appeal, said that it had been contended that there had been no request by the employers to the workman to undergo the operation, and that such a request was necessary before there could be any refusal by him (*India Rubber, Gutta Percha & Telegraph Works Co. Ltd.* v. *Chapman*, 20 B.W.C.C., at p. 187). But the observations relied on were made with reference to the facts of that case, and did not purport to lay down the principle that no refusal could be effective unless it were a refusal of an offer by an employer. If the disability was attributable to unreasonable conduct by the workman in refusing to undergo treatment which would probably cure him, then it did not matter whether the suggestion of the treatment came from his employer or his own medical adviser. There was no necessity for an antecedent request by the employer.

ROMER and MACKINNON, L.JJ., agreed.

COUNSEL: *J. Pugh*; *Hylton-Foster*.

SOLICITORS: *Pattinson & Brewer*, for *Pearlman & Rosen*, of Hull; *Boxall & Boxall*, for *Drury & Taylor*, of Goole.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

### Doxford & Sons Ltd. *v.* Furness Shipbuilding Co. Ltd.

Greene, M.R., Romer and MacKinnon, L.JJ.
9th November, 1937.

WORKMEN'S COMPENSATION—COMPENSATION PAID TO INJURED WORKMAN—INJURY CAUSED BY WORKMAN LENT BY EMPLOYERS TO ANOTHER FIRM—WHETHER RIGHT TO INDEMNITY—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), ss. 5, 30.

Appeal from Sunderland County Court.

The applicants, the Doxford Company, were engaged in fitting Diesel engines in a motor vessel being built by the respondents, the Furness Company. By reason of the urgency of the work the Furness Company borrowed certain workmen from the Doxford Company, and one of these, while performing the task required, dropped an implement, injuring one of the men employed by the Doxford Company, working below. The Doxford Company paid him compensation under the Workmen's Compensation Act, 1925, and now, by arbitration proceedings under the Act, claimed a right of indemnity against the Furness Company. His Honour Judge Richardson dismissed the application.

GREENE, M.R., allowing the applicants' appeal, said that the true construction of s. 30 was the same whether the procedure was by action or by arbitration. The question whether the Doxford Company were entitled to an indemnity under s. 30 depended on whether the injury was caused in circumstances "creating a legal liability in some person other than the employer to pay damages in respect thereof." If there was negligence on the part of the workman causing the injury, that created a liability in his employers, whoever they might be. On the evidence the judge had rightly treated the relationship between the Furness Company and the man as being that of employer and employed. Therefore, there was a legal liability in them to pay damages to the injured man. But they had argued, and the judge had held that by reason of the definition of "employer" in s. 5, the court could not inquire into the relationship between the Furness Company and the man who had inflicted the injury, since he had been temporarily lent by the Doxford Company. (The section said that "where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person"). It had been contended that if the man was the servant of the Doxford Company for the purposes of the Act he could not be the servant of the Furness Company and, therefore, there could never be any question of bringing an action for damages against the Furness Company in respect of his negligence. But his lordship considered that the injured man could have brought an action for damages against the Furness Company and, if he established negligence, could have recovered. The Workmen's Compensation Act could have nothing to do with such a claim. That fact brought the case within the words "circumstances creating a legal liability in some person other than the employer" in s. 30. Accordingly, the matter should go back to the judge to decide whether or not there had been negligence.

ROMER and MACKINNON, L.JJ., agreed.

COUNSEL: *W. Shakespeare*; *J. Pugh*.

SOLICITORS: *Crossman, Block & Co.*, for *Dees & Thompson*, of Newcastle-upon-Tyne; *Tarry, Sherlock & King*, for *Cohen, Jackson & Scott*, of Stockton-on-Tees.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—Chancery Division.

### *In re* British Games Ltd.

Simonds, J. 16th November, 1937.

MONEYLENDER — LOAN TO COMPANY — CONSOLIDATING PREVIOUS LOANS AND ARREARS OF INTEREST—CONTRACT SIGNED BY DIRECTOR AND SECRETARY—WINDING-UP OF COMPANY—PROOF OF DEBT—MONEYLENDERS ACT, 1927 (17 & 18 Geo. 5, c. 21), ss. 6, 9 (2)—COMPANIES ACT, 1929 (19 & 20 Geo. 5, c. 23), s. 29.

From 1931, a private company from time to time borrowed money from certain registered moneylenders, eventually owing a large sum for principal and arrears of interest. In December, 1936, it entered into a contract with the moneylenders to borrow £4,950 on the security of a promissory note for payment by instalments of £50 or £30, with interest at 27½ per cent. per annum. After payment by instalments of £1,970, the balance

with accrued interest was to be paid on the 1st February, 1937. The whole amount was to become due and payable on failure to pay any instalment. The moneylenders were authorised by the company to retain the whole sum lent in repayment of previous advances. The secretary of the company and a director signed the contract "for and on behalf of the company." Default in a payment having been made in January, the moneylenders obtained leave to sign judgment for £4,695. In February, a resolution for voluntary winding-up was passed by the company. In April, the moneylenders lodged with the liquidators a proof for £4,709 as the balance of principal and interest then due. This was rejected and they appealed.

SIMONDS, J., allowing the appeal, said that it had been contended that as the memorandum could not be "signed personally" by the company, a contract under seal was the only way of complying with the Moneylenders Act, 1927, s. 6 (1). But the case was not within the Companies Act, 1929, s. 29 (1) (*a*), as it was not a contract which, if made between individual persons, would have had to be under seal. The signatures of the director and secretary, persons authorised to sign, satisfied s. 6 (1) of the 1927 Act. Further, as regarded s. 6 (2) of that Act, this was a transaction of loan in which a sum consolidating previous loans was lent and borrowed. The words used were analogous to those in *B. S. Lyle Ltd.* v. *Chappell* [1932] 1 K.B. 691, followed and explained by the Court of Appeal in *B. S. Lyle Ltd.* v. *Castle* (23rd May, 1935, unreported). *Dunn Trust Ltd.* v. *Feetham* [1936] 1 K.B. 22, was a different case. The objections to the validity of the proof under s. 9 (2) also failed. The proof should be admitted to rank for dividend.

COUNSEL: *H. Salt*; *J. L. Stone.*

SOLICITORS: *Fielder, Jones & Ball*; *Baileys.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—King's Bench Division.

### Mercantile Union Guarantee Corporation Ltd. *v.* Wheatley.

Goddard, J. 23rd November, 1937.

CONTRACT—HIRE-PURCHASE—AGREEMENT SIGNED BY PURCHASER BEFORE VENDOR HAD ACQUIRED ARTICLE—ARTICLE DULY ACQUIRED BY VENDOR BY THE TIME DELIVERED TO PURCHASER—WHETHER IMPLIED WARRANTY AS TO TITLE BROKEN.

Action for money due under a hire-purchase agreement.

The defendant, Wheatley, entered into an agreement with the plaintiffs, a hire-purchase finance company, for the hire-purchase of a motor lorry. The car was actually bought from a firm of motor-dealers, and, owing to delay in delivery by the makers, and the fitting of a special body, the plaintiffs actually paid for the lorry some days after the hire-purchase agreement had been signed by the purchaser. The lorry was delivered to the purchaser with the special body on 8th March, 1936, some weeks after the plaintiffs had bought it from the dealers. The defendant having failed to pay the instalments, the plaintiffs took possession of the lorry in September, 1936. The defendant sought to repudiate the contract on the ground that the plaintiffs had broken the express or implied condition in it that they were the owners of the lorry and had a good title to sell or hire it at the date when he signed the agreement. The plaintiffs brought this action claiming the balance of instalments due and a sum in respect of depreciation.

GODDARD, J., said that the only possible inference to be drawn from the payment by the plaintiffs of their cheque to the dealers was that the dealers intended the property in the lorry to pass to the plaintiffs, and that, from the time when the lorry was complete, it belonged to the plaintiffs alone. The defendant's obligations and liability began to run from 8th March, 1936, when the complete lorry was delivered to him. That was the true date on which the agreement began to run, and if it became material the court would rectify the document by inserting the true date; and the plaintiffs had readily agreed that the first instalment should be payable on 8th April. The defendant's defence was without merits, but he was entitled to raise it. He relied on *Karflex, Ltd.* v. *Poole* [1933] 2 K.B. 251. To the question, who was the owner of the car, counsel for the defendant had been unable to give a very satisfactory answer because, in his (his lordship's) opinion, it was clear that, from the time when the lorry came into the defendant's possession, which was all that mattered, the plaintiffs were the owners of it. The point for consideration in *Karflex, Ltd.* v. *Poole, supra*, was different. Here the plaintiffs could not have been the owners of the lorry at the date when the agreement was signed, but the mere date did not matter, because the court could rectify the date if necessary. In *Karflex, Ltd.* v. *Poole, supra*, the hire-purchase company had in good faith bought the car in question from a person who had no title to it. It was held there that the company could not retain the car because they were not in a position to warrant themselves its owner. He (his lordship) adhered to everything which he had said in that case. When a person let goods on hire-purchase it was a condition that at the time when he let them he was their owner. Acton, J., who was sitting with him, had, it was true, said ([1933] 2 K.B., at p. 262) "at the time of the signing of this agreement," but he (Goddard, J.), did not think that there was any difference between himself and Acton, J., on that point. What both members of the court had emphasised was that the material time was when the bailment took place, not the actual moment of signing the agreement. He (Goddard, J.) wished to say, in case there was any misunderstanding, that he had not intended the words in his judgment to apply, and that he did not think that they, in terms, applied to such a case as the present. The customer here got the machine from a person who had a good right to it. There must be judgment for the plaintiffs.

COUNSEL: *Gordon Alchin*, for the plaintiffs; *W. Russell Lawrence*, for the defendant.

SOLICITORS: *G. H. Drury*; *Alexander Fine, Hawkins & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### Turbyfield and Another *v.* Great Western Railway Co.

Greaves-Lord, J. 3rd December, 1937.

NEGLIGENCE—DEATH OF CHILD—LOSS OF EXPECTATION OF LIFE—ASSESSMENT OF DAMAGES.

Action for damages for personal injuries.

A collision occurred between a dray belonging to and driven on behalf of the defendant company and a child of eight, as a result of which she sustained injuries from which she died. The plaintiff, the girl's father, as administrator, claimed damages under the Law Reform (Miscellaneous Provisions) Act, 1934, for the benefit of the estate of his daughter for her injuries, and also damages for being deprived of her normal expectation of life.

GREAVES-LORD, J., said that the defendants' driver had been negligent and that no contributory negligence was to be attributed to the child. There remained the claim in respect of the child's deprivation of her normal expectation of life—damages which would have been recoverable by the girl had she lived to recover them. The question was how far damages must be assessed for the loss of expectation of life which the child had suffered. It had to be assessed in her personal right just as if she were living. The period by which her life had been shortened was the difference between the age at which she had died and the normal span of life of a girl of eight years. What had to be valued was life as a whole with all its various incidents. His lordship referred to *Rose* v. *Ford*, 81 SOL. J. 683; [1937] A.C. 826, and said that it appeared from the speeches in the House of Lords that that aspect of life had to be taken and valued with certain very

strict restrictions. It could not be taken on loss of earnings or any calculation as to earning capacity. It was not permissible to base it on the social position of the person whose life was shortened. A special case, such as that of an infant, should not be awarded a smaller amount than those cases which were not special. Each case must be dealt with on its own merits, and he could well conceive that, in the special case of an imbecile or an incurable invalid, there might be elements which would tend to reduce the compensation or the damages below what would ordinarily be awarded in the case of a normal person of full age. On the other hand, a young infant would have to meet all the perils of child life, and had to face the possibility—which only an infant, faced with a child's ability, had to face—of such an accident as the one in question. Therefore, in the case of a very young infant, it might be that the calculation of the exigencies and incidents of life would materially decrease the amount of damages to be awarded, whereas, in the case of an infant who had outlived the danger of childish ailments, it might well be said that that child's prospects had been clarified. The Court of Appeal, on certain facts, had apparently thought that the acceptance of £1,000 by the parties was right in a case where the deceased was twenty-three years of age. Here there was a difference of some fifteen years, which embodied that portion of life which was said by many to be the happiest. He failed to see why he should put the difference of fifteen years wholly on the debit side, and declined to do so. The court had to take into account, in arriving at some assessment of what his life was worth to a person with a normal expectation of life, its normal vicissitudes, coupled with the fact that the person had to provide for his own life. Since the assessment by the Court of Appeal of damages at £1,000 in one case, they had laid down that the degree to which the persons concerned would have appreciated the damages themselves was wholly immaterial. Giving the best possible consideration to the various elements, he held that the smallest amount at which the claim could be assessed was £1,500. There must be judgment for the plaintiff.

COUNSEL: *R. E. Manningham-Buller*, for the plaintiff; *W. N. Stable*, K.C., and *G. Bankes*, for the defendants.

SOLICITORS: *Barlow, Lyde & Co.*, agents for *Ivens, Thompson & Green*, Cheltenham; *A. G. Hubbard.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## Probate, Divorce and Admiralty Division

### Gulbenkian *v.* Gulbenkian.

Langton, J. 6th December, 1937.

DIVORCE—ISSUE AS TO DOMICIL—ACQUISITION OF DOMICIL OF CHOICE—INTENTION OF PERMANENT OR INDEFINITE RESIDENCE—EVIDENCE—PARENT'S APPLICATION FOR NATURALISATION—ADMISSIBILITY OF PARENT'S DECLARATION.

This was an issue as to domicil in a pending suit for dissolution brought by Mrs. Dore Gulbenkian against her husband, Mr. Nubar Sarkis Gulbenkian.

Mr. Gulbenkian, the plaintiff to the issue, denied domicil in England. He contended that, having been born in Turkey, a subject of the Ottoman Empire, with a Turkish domicil of origin, and at no time having come to a decision to live in England permanently, he had never acquired English domicil. Mrs. Gulbenkian, the defendant to the issue, relied, *inter alia*, upon the fact of her husband having grown up and been educated in England and long residence, as giving to him an English domicil of choice.

LANGTON, J., in the course of delivering a considered judgment, said that Sir Patrick Hastings had defined two points for the consideration of the court. (1) Had Mr. Gulbenkian, senior (the plaintiff's father), at the date of Nubar's majority acquired an English domicil; and (2) whether, in any event, Nubar had acquired a domicil of choice in England. He (his lordship) had also considered the question as to whether Mr. Gulbenkian, senior, if he had acquired an English domicil at all, had changed it for a French domicil of choice before his son had attained his majority. As to the greater number of the facts there had been no contest at all. The plaintiff was born in 1896 in Turkey, and three months afterwards the family removed to England. His lordship here referred to the naturalisation in England of Mr. Gulbenkian, senior, in 1902, and to the necessary declarations made by him for that purpose, which he (his lordship) had (after objection that the documents were irrelevant and that Mr. Gulbenkian, senior, was still alive), with some doubt and hesitation, admitted in evidence. He was satisfied that, by reason of Mr. Gulbenkian, senior, being now for all practical purposes permanently resident in Paris, and having refused to have anything to do with the present proceedings, it would be quite impossible for either party to have compelled his attendance in the witness box. From 1906 Mr. Gulbenkian, senior, led a life which alternated between London and Paris and other places on the Continent, but there was nothing in the evidence to show any intention to reside permanently in Paris or to acquire French domicil prior to the plaintiff's coming of age in 1917, although from 1919 onwards he had lived more and more in Paris, and since 1926 had lived there exclusively. Coming to the war period, the British War Office had declined the services of the plaintiff as an interpreter, but it would probably be unsafe to draw any inference from the decision of a war department in the first period of hostilities. Subsequently, the plaintiff had become a naturalised Persian subject and was honorary commercial attaché to the Iranian Legation in London. It had been agreed that Mr. Gulbenkian, senior, was a man of autocratic habit and disposition, and that the plaintiff was entirely dependent upon his father for his income, and that Mr. Gulbenkian senior had purchased a house in Paris with the intention that Nubar should live there, but Nubar's preference was to live in England. It might be that in the power of the purse the father still retained the last word over his son, but it was doubtful whether that last word ever had been or ever would be spoken. The plaintiff had never been confronted with the necessity to crystallise his views on the question of his final domicil, but he (his lordship) was quite satisfied that, if faced with the necessity of making a deliberate determination, the plaintiff would declare for an English domicil, unless certain that by so doing he would lose his inheritance from his father, and he (his lordship) thought that there was no probability of the son being faced with such a disagreeable alternative. [His lordship referred to Rules 7, 9 and 11 as to domicil in "Dicey's Conflict of Laws," and cited *Winans* v. *Attorney-General* [1904] A.C. 287; *Douglas* v. *Douglas*, 12 Eq. Cas. 617; *Udny* v. *Udny*, L.R. 1 H.L. Sc. 441, and *King* v. *Foxwell*, 3 Ch. D. 518.] His lordship found for the defendant on both of the points propounded for the consideration of the court, and judgment was given for the defendant with costs.

COUNSEL: *Sir Patrick Hastings*, K.C.; *Bayford*, K.C., and *H. W. Barnard*, for the plaintiff; *Melford Stevenson* and *Lord Drogheda*, for the defendant; *W. B. Frampton*, for an interested party.

SOLICITORS: *Charles Russell and Co.; Gordon, Dadds & Co.; Theodore Goddard and Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

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Mr. Sydney Hampden Peddar, solicitor, of Holland Park, W., left estate of the gross value of £30,010, with net personalty £25,843. He left £100 to the Church of England Temperance Society (London Diocesan Branch) for the Police Court Mission; £100 to St. Dunstans; £100 to the Home for Little Boys, Farningham and Swanley, Kent; £100 to the Belgrave Hospital for Children; and £100 to the Mission of Hope.

# Parliamentary News.

## Progress of Bills.

### House of Lords.

Air-Raid Precautions Bill.
Read First Time. [8th December.
Clydebank Burgh Order Confirmation Bill.
Read Third Time. [2nd December.
Divorce and Nullity of Marriage (Scotland) Bill.
Read Second Time. [7th December.
Empire Exhibition (Scotland) Order Confirmation Bill.
Read First Time. [7th December.
Hamilton Burgh Order Confirmation Bill.
Read Third Time. [2nd December.
National Health Insurance (Juvenile Contributors and Young Persons) Bill.
Read Third Time. [8th December.
Patents, etc. (International Conventions) Bill.
Read First Time. [7th December.
Public Works Loans Bill.
Read First Time. [8th December.
Rothesay Harbour Order Confirmation Bill.
Reported. [7th December.
Rutherglen Burgh Order Confirmation Bill.
Read Third Time. [2nd December.
Supreme Court of Judicature (Amendment) Bill.
Read Third Time. [7th December.

### House of Commons.

Air-Raid Precautions Bill.
Read Third Time. [7th December.
Assurance Companies (Amendment) Bill.
Read First Time. [8th December.
Blind Persons Bill.
In Committee. [7th December.
Clydebank Burgh Order Confirmation Bill.
Read Third Time. [6th December.
Coal Bill.
In Committee. [6th December.
Empire Exhibition (Scotland) Order Confirmation Bill.
Read Third Time. [3rd December.
Glasgow Boundaries Order Confirmation Bill.
Read Second Time. [8th December.
Local Authorities (Hours of Employment in Connection with Hospitals and Institutions) Bill.
Second Reading Negatived. [3rd December.
Merchant Shipping (Superannuation Contributions) Bill.
Read Third Time. [7th December.
Ministry of Health Provisional Order (Bridgwater Extension) Bill.
Read First Time. [7th December.
Poor Law (Amendment) Bill.
Withdrawn. [6th December.
Poor Law (Amendment) (No. 2) Bill.
Read Second Time. [8th December.
Prevention and Treatment of Blindness (Scotland) Bill.
Committed. [7th December.
Public Works Loans Bill.
Read Third Time. [7th December.
Quail Protection Bill.
Committed. [8th December.
Rothesay Harbour Order Confirmation Bill.
Read Third Time. [6th December.
Superannuation (Various Services) Bill.
Read Second Time. [2nd December.
Tithe (Amendment) Bill.
Read First Time. [3rd December.
Unemployment Insurance Bill.
Read Second Time. [2nd December.
Works Councils Bill.
Read First Time. [2nd December.

## Questions to Ministers.

### CRIMINAL STATISTICS (TRAFFIC OFFENCES).

Mr. C. WILSON asked the Home Secretary, in view of the fact that of the 750,000 persons proceeded against 57 per cent. were motorists, whether he can state the total amount of the fines inflicted; what proportion of these fines were retained for local use and what proportion was handed over to the Exchequer; and what amounts are contributed by the State to the expenses to which the local authority is put in dealing with these cases.

Mr. LLOYD: The criminal statistics for 1935 show that of the total number of persons found guilty in that year of offences of all kinds 57 per cent. were found guilty of traffic offences, but not all traffic offences are committed by motorists. The figures include, for instance, offences by pedal cyclists. The total number of persons convicted of offences relating to motor vehicles was 311,178, or approximately 41 per cent. The fines imposed on these persons amounted to approximately £380,000. These fines are payable to the Exchequer, less the statutory court fees amounting approximately to £60,000, which are retained for local funds. There is no Exchequer contribution towards the expenses of the Courts of Summary Jurisdiction (except for the payment of the salaries of the Metropolitan police magistrates), but the Exchequer bears half the cost of the police expenditure involved in presenting the cases. [2nd December.

### HOUSING.

#### RENT RESTRICTION.

Mr. AMMON asked the Minister of Health whether the committee on rent restriction has yet reported.

Sir K. WOOD: No, Sir, but I hope to receive this report within the next few days. [2nd December.

### COUNTY COURTS (TELEPHONES).

Captain CUNNINGHAM-REID asked the Attorney-General whether his attention has been drawn to the fact that the telephone numbers of the various county courts in the Metropolitan area are not included in the telephone directory; and whether, in view of the inconvenience which is thereby caused to all those having business with these courts, he will consider remedying this state of affairs.

THE ATTORNEY-GENERAL: I am aware that the telephone numbers of most of the county courts in the Metropolitan area are not included in the telephone directory, but it has been found by experience that inclusion in the directory has led to continuous calls from plaintiffs and defendants and their solicitors about matters before the court that cannot be dealt with over the telephone. [8th December.

# The Law Society.

### INTERMEDIATE EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Intermediate Examination held on the 3rd and 4th November, 1937. A candidate is not obliged to take both parts of the Examination at the same time.

#### FIRST CLASS.

James Wilton Hoare (Mr. Frederick Proctor, of the firm of Messrs. C. F. Saunders & Proctor, of Crewkerne); Anthony Edmonds Hogan-Fleming (Mr. Frederick Lyonel Hale, of the firm of Messrs. Lambert & Hale, of London); George Hooper (Mr. Erskine Hannay, of the firm of Messrs. Hannay and Hannay, of South Shields); Graeme McLean (Mr. Harold Jevons and Mr. James Kenneth Hope, both of Durham); Jim Treleaven (Mr. Stuart Luttrell Peter, of the firm of Messrs. Peter, Peter & Sons, of Launceston); Simon Warshawsky (Mr. Aymere Albert Fletcher Stubbs, of the firm of Messrs. Hett, Davy & Stubbs, of Brigg); John Cornelius Woodhouse (Mr. John Ambler Johnson, of the firm of Messrs. Finch, Johnson & Lynn, of Preston).

#### PASSED.

William Thomas Adams, James Plowman Adcock, Eric Smith Austerfield, B.A. London, George John Coote Beecroft, Cecil Marie Bishop, Keith Nicholson Blake, B.A. Cantab., Kenneth Richard Bradley, Frederick William Bull, Geoffrey Bunn, Robert Patrick Campbell, Elizabeth Marion Clark, Philip Howard Cook, John David Coulton, Helena Nora Cox, William Forrest Crawford, James Fred Culross, William Arnold Darbyshire, Albert Henry Dodson, Bernard Eilstein, Bernard William Elliott, Charles Roger Evans, John Watkin Evans, William George Hawkins, Arthur Henry Howell, Norman Hodges Jackson, Edith Jones, Frederick Richard Jones, Peter Stanley Pugh Jones, Wilfred Kenelm Kilner, Clifford Norman King, Ernest Gordon Knight, John David Lodge, Eluned Parry, Owen Henry Parsons, B.Sc. London, Albert Platt, David Charles Ingram Powell, Geoffrey Noel Prentice, William Keith Campbell Ramsay, Richard Ivor Rees, Donald Ross, Antony Edward Lambart Sladen, Peter Henry Stainsby, Laurence Stone, George Edward Weston Styles, Alan Hedley Sutcliffe, John Bernard Sweetman, Jack Stripling Syrett, John Francis Thornton, Arthur Hough Timperley, Thomas Patrick Dudley Ward, George Anthony Wharton, Harold Walton Wood.

The following candidates have passed the Legal portion only :—

William Ronald Ainslie, B.A. Cantab., Patrick Albert Leonard Allen, Mavis Margaret Janette Angel, Charles Bernard Baines, James Emrys Barnes, James Alan Llywelyn Barter, John Richard Nangreave Bell, Laurence Mancha Bennett, Bernard Charles Bentley, George Joseph Black, Thomas Blandford, B.A. Oxon, Jack Gerald Bosman, John Hugh Neville Bourne, Neville James Briant, James William Revis Bridger, John Gordon Brooks, James Christopher Browne, B.A. Cantab., William Alexander Coulson Browne, Hugh Francis Burns, John Charles Burridge, John Henry Carroll Byrne, Peter Marriott Caporn, John Wooddill Harold Carey, Peter Alfred Ernest Carey, Peter Philip Cavanna, John Henry Chambers, Alban Cecil Cheesman, Rowland Daniel Clarke, Frank Illingworth Clough, Antony Scott Clover, Harry Stafford Cooke, Ian Douglas Crompton, Michael Charles Croslegh, Reginald Peter Cross, Harry George Culliss, Kenneth Jack Curtis, Rodert Bruce Adcock Cushman, Paul Pattinson Danson, Charles Parker Davies, Thomas King Davies, William John Davies, Paul Gerard Day, Richard Storry Deans, John Francis Marcin de Bartolomé, David Eric Livingstone Dickson, Nigel Robert Earnshaw, Harry Ellis, John Leslie Fabel, John Raymond Fearon, B.A. Cantab., Roy Thomas Fells, Michael Wingfield Figgis, Charles Leslie Fitzpatrick, Harold Clive Le Neve Foster, Kathleen Esmé Gabbutt, Claude Arthur Terence Gasper, B.A. Cantab., John Foster Glanville, Charles Frederick Gould, John Brian Green, B.A. Cantab., Leonard Victor Gutteridge, Harold Bryan Haddon, Clement Hanson, Reginald Martin Harris, Brian Fraser Harrison, Lawrence Joseph Hartley, Albert Hey, Colin Elliott Hill, John David Vernon Hinde, Leonard Marsland Hobkinson, Cyril Wright Hodgson, Laurence William Hodgson, Charles Harold Homan, Guerdon Leslie Hooper, Neill Hopwood, Francis Home Howard, Mark Bolwell Howard-Williams, B.A. Cantab., Roger Rodwell Humble-Smith, Alexander Elder Husband, George Ernest Insley, Leslie Weaver Jones, Henry Kaye, Harold Ralph Kenwright, Percy Layzell, Frank Lambert, Vivian Herbert Lawson, Anthony Pearce Leach, Fred Lister, John Mechan MacAuslan, Charles William Hedley Coote McLeavy, George Wood McNaught, B.A. Oxon, Richard Charles Donald Makins, Donald Roy Malcolm, Douglas Philip Marr, John Marriott, James Colquhoun Marris, Vivian Randolph Marshall, Eric Nelson Marsham, Harold Bendix Vilhelm Matthissen, Kenneth Allan Melrose, Edward Anthony Moore, Richard Elwyn Moore, David Emrys Morgan, Leonard Morgan, Gordon Towers Mynors, James Lawrence Nelson, Henry John Newstead, Kenneth Deryk Emrys Oakley, John Lachlan Sutherland Oliver, John Gifford Ormerod, Charles Maxwell Owen, Basil Arthur Parnwell, David Clifford Phillips, Eric Prior Pickering, Joseph Pinder, Martin James Pollock, B.A. Cantab., Geoffrey Portnell, Robert Edward Prescott, Kenneth Rupert Ranson, Basil Edward Rhodes, James Worsley Graham Richardson, Gilbert Rishton, Armand Robert Graeme Ritchie, John Emile Glyn Roberts, Edward Robertson, Woolfa Rosin, Cyril Saper, Robert Irwin Maddin Scott, Richard Gleadowe Seager, John Shannon, John Penn Sherbrooke, Arthur Smales, Derek Bardsley Spiers, Ewart Rex Spooner, Frank Stephenson, Ronald Swallow, David Arthur Vaughan Thomas, Lewis John Thomas, John Bridge Tyrer, B.A. Cantab., John Hustler Walker, Colin Boaler Walton, David Martin Waters, Charles Joseph Webster, Charles Francis Wegg-Prosser, B.A. Oxon, Domenic Victor Weibel, John Wellock, Edwin Ronald West, Richard Francis West, Geoffrey Lloyd White, B.A. Oxon, Hubert James Wildbore, Dorothy Mary Rowan Wilkin, B.A. Oxon, Frederick Morris Williams, Meurig Williams, B.A. Wales, Richard Thomas Parker Wilson, Henry George Woods, Peter John William Wyatt, Edwin Thomas Young, Bruce Potier Youngman.

No. of Candidates, 344. Passed, 215.

The following candidates have passed the Trust Accounts and Book-keeping portion only :—

Samuel Bernard Adler, James Berry Aitken, B.A. Cantab., Patrick Rawnsley Alexander, Kenneth Andrews, Peter Greenhill Andrews, Francis John Ashworth, John Stafford Aston, B.A. Cantab., Reginald Davenport Atkinson, Arthur Philip Badger, Morris William Bailey, B.A. Cantab., Robert Thomas Keyston Baillie, Christopher Davidson Baily, William Bainbridge, LL.B. Manchester, Thomas Henry Band, LL.B. London, Louis Percival Heywood Barchard, B.A. Oxon, Edward George Hedges Barford, David Evelyn Houstoun Barnes, David Gordon Barnett, Cecil Ridge Batchellor, LL.B. Durham, Marjorie May Baxter, B.A. Cantab., LL.B. Birmingham, Charles Frederick Morgan Beard, Warwich Hilson Beaver, John Goodwyn Allden Beckett, B.A. Cantab., Robert Scott Beedell, William Albert Bennett, Samuel Ezekiel Betesh, LL.B. Manchester, Cecil Barstow Beverley, Royle James Bird, Wilfrid Lambert Blackbourn, Michael Hill Blackwood, LL.B. Liverpool, Richard Board, Roland Borrie, Brian Henry Bourke, B.A. Oxon, Raphael Howard Boyers, John Boys, Ernest George Braithwaite, B.A. Cantab., Denzil John Atyeo Briggs, B.A. Cantab., John Paterson Brodie, Philip David Brown, Kenneth Buckley, B.A. Cantab., Gordon Ronald Burke, John Joseph Burke, LL.B. Manchester, James Leslie Burness, B.A. Cantab., John Astell Burt, Cedric Field Butler, Brandon Cadbury, B.A. Cantab., John Quentin Carter, Geoffrey Studholme Cartmell, B.A. Cantab., Francis Sydney Casserley, John Guy Caunce, Peter Ollrid Chippindale, Robert John Churchman, Sydney Drabble Clayburn, Howard Norman Clifford-Turner, Kenneth Murray Cole, Stanley William Collett, Francis Geoffery Collins, B.A. Cantab., Eric Edwin Cooke, John Neville Cotton, Geoffrey Dennis Walden Court, Richard George Raison Cross, Philip Edwin Crowe, LL.B. Liverpool, Frederick William Dawson, B.A. Oxon, Clifford Hornby Dewhurst, Harry Hardacre Dickinson, James Granville Dixon, John Dudley Dixon, John Neville Dixon, LL.B. Manchester, Ernest Doughty, Alfred Harry Draper, B.A. London, Bernard Wilfrid Kingdon Driver, Paul Dungay, B.A. London, John Cecil Bosville Durrant, Kenneth Bertram Dyer, Harold David Buckland Eaden, B.A. Oxon, Robert Egerton, B.A., LL.B. Cantab., Robert John Gratrix Ellett, B.A. Oxon, James Raymond Ellis, LL.B. Liverpool, Anthony Welldon Ellison, B.A. Cantab., Samuel Evans, Robert Henry Kenneth Fair, B.A., LL.B. Cantab., John Hubert Field, B.A. Oxon, Elizabeth Margaret Eileen Filbee, George Norman Clayton Flint, B.A., LL.B. Cantab., Amador John Gabriel Hussey Fonseca, Hugh Rudolf Fortescue, Philip Francis, Arthur Bernard Franklin, Jack Franks, LL.B. London, Arthur Edmund Frost, Dean Ronald Gardner, John Francis Garner, LL.B. London, Robert Joseph Garratt, Douglas Edmund Gibson, LL.B. London, Wilkinson Keenleyside Gibson, B.A. Cantab., John Bewley Gilbart-Smith, B.A. Cantab., John Alan Gillman, B.A. Cantab., Harry Wood Gledhill, LL.B. Leeds, Harry Peter Godwin, Claud Gordon, Alban Peter Butler Gould, LL.B. Liverpool, Solomon Grabiner, Eric Murray Gregory-Jones, John Messent Grover, Martin Henry Grundy, B.A. Oxon, Henry James Gundill, B.A. Cantab., Ivor Francis Gurney, William Gavin Haig, Frederick Hales, Arthur James Stevenson Hall, William Lewtas Wing Hall, Joseph Michael Hallam, Cecil Martin Hannam, John Philip Gladstone Harris, Denis Byrne Harrison, LL.B. Liverpool, John Lancaster Harrison, Antony Garrett Hayes, Henry Shekell Illingworth Haynes, Robert Glaister Healy, John Stanley Heath, Fritz Hellendall, LL.B. London, Dr. Jur. Cologne, Colwyn Streeten Mulvy Hemsley, Percy John Henshaw, Richard Henton, B.A., LL.B. Cantab., Richard Herbert, John Christopher Pearce Higgins, B.A., L.L.B. Cantab., Norman John Highwood, Norman Ashton Hill, Richard Colman Hines, B.A. Cantab., Alfred Collingwood Hobson, Norman Goodwin Holborow, Michael Reynolds Hole, B.A. Cantab., Charles Holland, Frank Lionel Leaver Holmes, Robert Gerald Hopwood, Terence Horkin, Lawrence Maurice Horner, James Alan Howard, William Robert Howey, Robert Charles Ernest Hudson, B.A. Oxon, John Fletcher Hulton, Ambrose Frederick Hussey-Freke, B.A. Cantab., Clifford Barnett Hutchings, Wilfrid James Hutton, Derek Joseph Hyamson, B.A., LL.B. Cantab., Reginald Frank Ingoldby, Eric Irvine, Charles Dalkin Jackson, Harold Vincent Jackson, John Jackson, Aubrey Graham Wallen James, Richard Ridley Hastings James, B.A. Cantab., John Frederick Jobson, John Stuart Johnstone, B.A. Cantab., Frederick George Jones, John Pritchard Jones, LL.B. Wales, Stuart Lloyd Jones, LL.B. Liverpool, Peter Nathaniel Waley Joseph, B.A. Oxon, Gerald William Allison Kayser, Robert Belsey Keep, Arthur Raymond Maxwell Kelly, Graeme Ifor Kemp, John Frere Kerr, B.A. Oxon, Eric Knott, Kenneth Kirkland Lacey, Thomas Russell Lake, B.A. Cantab., Richard Neville Lancaster, John Philip Lawton, B.A., LL.B. Cantab., Ronald Geoffrey Laycock, Howard de Mussenden Leathes, Denis Richard Ledward, B.A. Oxon, Thomas Marston Lee, B.A. Oxon, David Leslie Lewis, John Clifford North Lewis, B.A. Oxon, John Stanley Lewis, B.A., LL.B. Cantab., Anthony Fetherston Lloyd, B.A. Cantab., Cecil Arthur Lloyd, Michael Forbes Loader, Richard Alfred Creswell Loader, Anthony Osmond Locke, B.A. Oxon, Arthur John Gow Logan, John Rowland Long, George Longden, William Frederick Cyril Lovett, LL.B. London, Clement Capenhurst Lucas, B.A. Oxon, Geoffrey Thomas Fleetwood Luya, Cyril Joseph McCalvey, Patrick James Danvers McCraith, Roy Cecil McDougall, Charles James MacMahon, LL.B. Liverpool, Lionel Geoffrey Maddison, Denis John Magrath, Geoffrey Atherton Malone, Peter Marriage, B.A., LL.B. Cantab., Margaret Mason, LL.B. Manchester, Charles Peter Mastin, Basil Charles Mawson, B.A. Oxon, William Ronald Maitland Maxwell, Christopher John Metcalfe, B.A. Cantab., Gordon

Holmes Meyrick, John Oastler Milner, Robert Kent Milsted' Philip Holme Mitchell, Audrey Boyes Monk, LL.B. Manchester, Geoffrey Monks, Stanley James Duffield Moorwood, Charles Wallace Morgan, James Williams Morgan, Thomas Lewis Morgan, LL.B. Wales, William Williamson Morgan, Samuel John Godfrey Gunthorpe Morgan-Morris, Walter Robert Mummery, Kenneth McLeod Munro, James Bartle Murray, Francis William Naylor, B.A., LL.B. Cantab., Diana Nelson, Mark Beddall Newman, George Chester Ogden, B.A. Oxon, Harry Chapman Ogden, John Geoffrey Ogden, Peter Atkinson Ord, Fred Orrell, Isle Philip Grant Overton, Oliver Tyeth Parker, Derrick Ernest Lane Parsons, Trevor Stanley Passmore, James Wylie Patterson, Thomas Edward Pattinson, Anthony Peter Hawthorn Peach, George Sturrock Pearson, Richard William Stanton Pegge, Thomas Bertram Pelham, Joseph Pey, LL.B. Liverpool, Russell Craik Pharaoh, David Alexander Evander Claude Philips, B.A. Oxon, John Phillips, Derek Lewé Loynston Pickard, William Humphrey Pickstone, Claude Drew Pike, B.A., LL.B. Cantab., Anthony Pilcher, John Frederick Plant, John Perry Plant, LL.B. Birmingham, Christopher Wightman Powers, B.A. Oxon, Cyril Douglas Price, LL.B. Liverpool, Arnold Rakusen, LL.B. Leeds, Edward Hugh Ratliff, B.A. Oxon, Hamilton Russell Reade, Gerhart Hans Leopold Rebenwurzel, LL.B. London, Lewis Roland Rees, Harold Mayne Reid, Thomas Miller Reid, LL.B. Liverpool, Richard Owen Rhys, Reginald Baron Julius Richards, B.A. Cantab., Charles John Rickard, B.A. Cantab., Harold Lionel Rivlin, LL.B. Wales, John Marsack Rix, Desmond Robinson, Maurice Allpress Robinson, B.A. Cantab., John Morris Rogers, Harold Roskelly, Jacob Roth, LL.B. Manchester, Ernest John Routly, B.A. Cantab., Harvey Cecil Rubin, Robert Mark Rutherford, Harry Bernard Sacker, B.A. Oxon, Selwyn Samuel, Henry Harvey Saville, Basil Anthony Sharpley, Arthur Allison Shearer, Robert Edward Hatton Sheridan, Dennis Russell Simm, Arthur Gerald Skett, James Thomas Eric Skidmore, LL.B. Leeds, Harold Sklan, Alvan Esmond Slack, B.Sc. Manchester, Ronald Desmond Crawford Slade, Robert Leslie Sloan, David Blackham Smith, Ian Fryer Smith, Jack Smith, John Temple Smith, Robert Edgar Snaylam, Peter George Spencer, Donald George Stagg, Arthur Colin Staples, James Cuthbert Steel, Hugh Ivor Steven, Edward John Steward, Harold Campbell Stewart, Roger Stockil, Robert Telfer Stotesbury, John Stow, John Norman Sutton, Keith Stewart Paul Swayne, John Bentley Talbot, Louis Tarlo, Alan Rowland Taylor, John Cuthbert Brooke Taylor, Moses Isaac Temkin, LL.B. London, George Roger Tench, B.A. Oxon, Iorwerth Llewelyn Thomas, John Bryan Thomas, William Guy Toone, John Renshaw Beckit Truman, Robert John Ashworth Turner, Anthony Cyril Unsworth, Andrew Murray Urquhart, B.A. Oxon, Jack Harvey Vallis, Marcus Wise Wadsworth, James Donald Walker, Sidney Waller, Edward Marcus Walmsley, Edgar Ratliff Warburton, Sidney Harold Warnes, Harry Mordecai Waterman, LL.B. Leeds, Eric Frank Waters, B.A. Cantab., Constance Lilian Janet Webb, Gordon Roy Webb, Noel Henry John Weeden, Lawrence William Weeks, John Montague Weiss, Reginald Cyril Wells, LL.B. Sheffield, Stephen Valentine Bankes Wenham, Anthony Peter Wolfe Mower White, B.A. Oxon, Geoffrey Noel Platts White, John Whitton, Alfred Francis Wilkinson, George Leslie Ruston Wilkinson, Edward John Venables Williams, Ifor Bryan Williams, James Anwyl Williams, Stanley Joseph Wilson, John Michael Wilton, Reginald Derek Wise, Louis Anthony Wolfe, Thomas Barratt Woolliscroft, Geoffrey Falcon Wray, Ruskin Edwards Wynne, John Trevor Yates.

No. of candidates, 485. Passed, 398.

# Societies.

## Solicitors' Managing Clerks' Association.

This Association held its thirty-second festival dinner at the Wharncliffe Rooms, on 2nd December. The President, Mr. RALPH ARNOLD, who occupied the chair, after proposing the loyal toasts, called upon Lord Russell of Killowen to propose the health of the Association.

LORD RUSSELL OF KILLOWEN said that he was glad to think that he and the Association were old friends. The number of dinners which he had consumed at its expense would have jeopardised the existence of a less solvent society. It was no longer a stripling, but had reached the comparatively mature age of forty-five years. It had, in fact, been founded almost on the eve of his Lordship's call to the Bar, but he did not suggest that its foundation had any connection with that world-shaking event. It pleased him to think that his first brief had on it the handwriting of Mr. Spooner, one of the Association's oldest members. It had not been founded, however, for the assistance of deserving young barristers, but with the object of protecting and advancing the interests of solicitors' managing clerks. This, his Lordship thought, suggested two considerations: First, whether the solicitors' managing clerks were a race whose interests ought to be protected, much less advanced; and secondly, did the Association really fulfil its primary object?

On the first point he spoke with some authority, for in the year 1890 a wise old father had sentenced him to twelve months' hard labour in a solicitors' office, so that he might see the business of the law at its very source. He had, therefore, worked under a number of solicitors' managing clerks and could claim to be able to estimate their true value. He had, incidentally, learned and admired the extraordinary value to a firm of a really skilled costs clerk. Just as scientists could take a single bone of a prehistoric animal, which had long disappeared, and from it build up the whole structure, so could a skilled costs clerk, by a single entry in a diary build up a regiment of items which would fill the client with terror and dismay. His later experience at the Bar had also taught him much about the way in which managing clerks conducted their work, and, finally, on the Bench in the Chancery Division he had been able to appreciate their discharge of their responsibilities, not only in preparing matters for argument by counsel, but also in their skilful advocacy of matters determined in chambers.

At the risk of wounding the susceptibilities of all the full-blown partners present who had once been managing clerks themselves, he expressed his true opinion that, although partners might be, and indeed sometimes were, useful and supplied the going concern with a respectable and at times decorative chassis and with the finances for running expenses, the real motive power of the machine was the body of managing clerks. They attended to all the heartbreaking details of cases; they had to see and cross-examine the client until he lost his temper; they had to ensure that all the actors were assembled in court before the curtain went up; and, finally, when the action had been dismissed with costs, walk back to the office with the disgruntled client and explain to him as best they might how well they had really been advised and how unfortunate they had been to have their case tried by a particularly stupid judge. These were the works and deeds of real heroes, and proved that the race of managing clerks was well worth preserving and that their interests ought to be protected and, if necessary, advanced.

On the second point, whether the Association did these things, Lord Russell expressed admiration for the way in which it fulfilled its object. It held lectures on legal subjects given by barristers in the Inns of Court, and law classes for junior clerks were held by senior members who were willing to put their time and experience at the disposal of the coming generation; and published a monthly journal which was full of matter relevant and irrelevant, wholesome and respectable, and which, so far as he knew, had never yet been the defendant in a libel action. It had, however, had the temerity to discuss at a members' meeting the proposition that *Sim* v. *Stretch* had been wrongly decided, by the House of Lords, of whom he himself had been one. He quoted a famous judgment to prove the infallibility of their lordships' House.

THE PRESIDENT, in reply, said that the Association represented clerks not only in London but throughout the country, who were proud to belong to it. The council considered themselves trustees not only of the Association's property, but also of its reputation. It had passed a successful year; the membership had increased and it had continued its educational and other activities and kept its library up to date. The Bournemouth branch continued to flourish. Members also enjoyed social relaxation; during the past year, for the first time, a dance had been held. The venue had been the Stationers' Hall, and it had admittedly been so successful that an appeal had been lodged that it should be made an annual event. A splendid spirit of comradeship flourished among members, and the President thanked his colleagues cordially for their assistance and co-operation during his term of office.

Dr. E. LESLIE BURGIN, M.P., Minister of Transport, then proposed the health of "His Majesty's Judges." He observed that when Lord Russell had said the House of Lords was never wrong, his lordship had been speaking of the House as a judicial body. In a legislative capacity it had once abolished the Ministry of Transport. His relations with His Majesty's Judges continued to be friendly, and that in spite of a little provocation over a stop-light. The secondary vocation of a member of His Majesty's Government was to go out and sing for his supper. Before a recent public function at which he had been a speaker, held in the borough in which he had been born, he had asked one of his permanent

staff to consult the records and find information concerning the place. The clerk had returned with the report, "the borough has little history, and what little there is is disreputable." The unconventional opening had considerably helped him. On his return to the precincts of the profession which had known him as a child, he naturally asked: "Who are the judges?" A judge had been defined as a leader in war invested with temporal authority in ancient Israel in the period somewhere between Joshua and Kings, and "the judge" was also the name of a kind of artificial fly.

Solicitors' clerks accepted responsibility for the judges' appointment, for none could rise to the eminence of the Bench before he had received briefs from almost every one of the big firms represented that evening. Just as a private soldier carried a field-marshal's baton in his knapsack, so every brief given to a common law junior carried with it the possibility of ultimate appointment to be a judge's marshal. The clerks rejoiced in the results of their handicraft; sometimes it was embarrassing, but sometimes it was good fun, to ask one of His Majesty's Judges if he could state with any degree of accuracy the precise reason for his appointment. Viscount Sankey, having constantly appeared before the supreme tribunal arguing workmen's compensation cases, had been heard to say on receiving a note from the Lord Chancellor—acting, of course, as agent for the solicitors—of his appointment, that it might fairly be said to arise out of and in the course of his employment.

Sir WILFRID GREENE, M.R., said, in reply, that he had noticed that it had been usual for the person who proposed and the person who responded to this toast to sing the praises of the managing clerks. The clerks thought to themselves, "Yes, we spotted that man when he was first called to the Bar; we knew that he would become a judge one of these days; we gave him his first brief." The respondent usually ascribed the whole of his success to the far-sightedness of the managing clerks with whom he had come in contact in his first days. This fallacy should be exploded. It was, however, perfectly true that the managing clerk who had delivered a brief to him in his first year at the Bar had showed very great insight. Those managing clerks who had, about the year 1909, asked him with great discrimination to take running-down cases in the courts of London, had certainly acted rightly. It was in those early days at Bloomsbury, Westminster and Marylebone that the very foundations of modern jurisprudence in running-down cases had been well and truly laid.

Mr. Justice DU PARCQ, also in reply, said when the leader had sat down the junior knew that one of two things had happened. Either the case had been so admirably put that it was useless for him to say anything further, or his leader had made such a mess of it that it was equally hopeless to do anything. He thought it would be disrespectful to say which view he took.

Mr. G. D. ROBERTS, K.C., in proposing the toast of "The Ladies," said that the letter asking him to propose it had said that the toast would be replied to by a certain lady whose name he would not mention until after discovery. He now found to his horror that the response had been entrusted to Mr. Justice Simonds, and he knew of no rule or provision of the Sex Disqualification Act which entitled that learned judge to respond or even rise to "The Ladies" at all.

Mr. Justice SIMONDS replied, and Mr. GEORGE DENTON proposed the toast of "The Chairman."

# Rules and Orders.

THE COUNTY COURT DISTRICTS (MISCELLANEOUS) ORDER, 1937. DATED NOVEMBER 22, 1937.

I, Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, by virtue of Section 2 of the County Courts Act, 1934,* and of all other powers enabling me in this behalf, do hereby order as follows:—

1. The Abergavenny and Blaenavon County Court shall cease to be held at Blaenavon and shall be held at Abergavenny by the name of the Abergavenny County Court.

2. Part of the District of the said Court, namely, the Urban District and Civil Parish of Blaenavon as constituted and limited at the date of this Order, shall be transferred to and form part of the District of the Pontypool County Court and the Pontypool County Court shall be held at Pontypool and at Blaenavon by the name of the Pontypool and Blaenavon County Court.

3. The District of Easingwold County Court shall be consolidated with the District of York County Court and the holding of Easingwold County Court shall be discontinued.

4. The York County Court shall have jurisdiction to deal with all proceedings which shall be pending in the Easingwold County Court when this Order comes into operation.

5. The South Shields and Jarrow County Court shall cease to be held at Jarrow and shall be held at South Shields by the name of the South Shields County Court.

6. This Order may be cited as the County Court Districts (Miscellaneous) Order, 1937, and shall come into operation on the 1st day of January, 1938, and the County Courts (Districts) Order in Council, 1899, as amended,† shall have effect as further amended by this Order.

Dated the 22nd day of November, 1937.

*Hailsham*, C.

* 24 & 25 Geo. 5. c. 53.

† S.R. & O. 1899, No. 178, printed as amended to 1903, S.R. & O. Rev. 1904, III, County Court, E., p. 1. For subsequent amendments *see* "Index to S. R. & O. in Force, July 31, 1936," at pp. 195–8, and S.R. & O. 1936 (Nos. 1131 and 1301) I, pp. 277–9.

COUNTY COURT CHANGES.

I, DOUGLAS MCGAREL VISCOUNT HAILSHAM, Lord High Chancellor of Great Britain, by virtue of the County Courts Act, 1934, and all other powers enabling me in this behalf, do hereby order as follows:—

1. His Honour Judge Cotes-Preedy, K.C., shall cease to be the Judge of the districts of Stratford-on-Avon and Warwick County Courts, and His Honour Judge Kennedy, K.C., shall be the Judge of the said districts in addition to the districts of which he is now the Judge.

2. This Order shall come into operation on the 1st day of January, 1938.

Dated the 3rd day of December, 1937.

*Hailsham*, C.

# Legal Notes and News.

## Honours and Appointments.

The Colonial Office announces the following appointments and promotions in the Colonial Legal Service:—

Mr. P. M. DALTON appointed District Magistrate, Gold Coast.

Mr. L. G. LANGLEY appointed District Magistrate, Gold Coast.

Mr. I. E. G. LEWIS appointed Registrar of the High Court, Zanzibar.

Mr. I. L. BRACE (Crown Counsel) appointed Assistant Judge, Protectorate Court, Nigeria.

Mr. R. M. CLUER (Resident Magistrate, Jamaica) appointed Crown Counsel, Straits Settlements.

Mr. G. M. OLIPHANT (Registrar of the High Court) appointed Administrator-General, Northern Rhodesia.

Mr. JOSEPH BAKER, Barrister-at-Law, has been appointed Chairman of the Assessment Committee for the Holborn Assessment Area for the fourth successive year. Mr. Baker, who is a member of Lincoln's Inn and Gray's Inn, was called to the Bar in 1918.

Mr. ARTHUR PRIESTLEY, chief assistant solicitor to Birmingham Corporation, has been appointed Deputy Town Clerk of Hull. Mr. Priestley was admitted a solicitor in 1927.

At a meeting of the Faculty of Advocates in Edinburgh, the Dean of Faculty presiding, Mr. James Barclay Murdoch Young, M.C., advocate, Treasurer of the Faculty, was unanimously elected Clerk of Faculty in succession to Mr. J. R. Wardlaw Burnet, K.C., who has resigned.

## Notes.

On Thursday, 16th December, at 4.30 p.m. at 2, King's Bench Walk, The Temple, E.C.4, Mr. Wyndham Legh Walker, Whewell Scholar in International Law, will read a paper before the Grotius Society on "Belligerent Rights."

The following scholarships and prizes have been awarded by the Benchers of the Inner Temple this year: Entrance Scholarships of 200 guineas a year for three years to Mr. P. W. E. Taylor, Mr. E. W. Jones and Mr. J. D. F. Moylan; a Yarborough-Anderson Scholarship of £100 a year for three years to Mr. R. J. S. Thompson; a Profumo Prize of 100 guineas to Mr. W. Nathan; a Poland Prize of £23 to Mr. M. V. Osmond; Pupil Studentships of 50 guineas to Mr. F. L. Lee and Mr. R. H. T. Whitty, and of 100 guineas to Mr. W. E. Lewis and Mr. R. J. S. Thompson.

On 1st January, 1938, a new grade of membership of the Incorporated Society of Auctioneers and Landed Property Agents, that of Affiliated Members, will come into being. The relevant article, which was adopted by a special general meeting of members held on 9th July last, reads as follows: "An affiliated member of the Society shall be more than twenty-one years of age, shall not be an estate agent, auctioneer, surveyor or valuer by profession, but shall be of such profession or occupation as to qualify him in the opinion of the Council to advance the object for which the Society was founded and especially professional knowledge." Forms of application and other details may be obtained from the General Secretary, at 34, Queen's Gate, London, S.W.7.

On Friday afternoon, the 26th November, the Judge's Private Room at the Central Criminal Court was the occasion of a pleasant ceremony, when a presentation was made to Judge Hugh Beazley, recently appointed Judge of the Mayor's and City of London Court, formerly County Court Judge of Circuit 38, comprising parts of Essex, Middlesex and Hertfordshire. The presentation took the form of a silver salver which bore the inscription: "Presented to His Honour Judge Hugh Beazley by the Registrars and Officials of the County Courts of Hertford, Edmonton, Grays, Southend and Ilford, as a mark of esteem." Mr. Adam Partington (Group Registrar, No. 38 Circuit) made the presentation on behalf of the Registrars. Mr. John T. Kelley (Chief Clerk of the Grays County Court) spoke on behalf of the Clerks of the Courts, and Mr. H. F. Cox (Bailiffs' Department, Southend County Court) voiced the good wishes of the Bailiffs of the Courts.

### RENEWAL OF PRACTISING CERTIFICATES.

We would again remind our readers that Solicitors' Practising Certificates for 1937-38 should be renewed before the 15th December. All certificates on which the duty is paid after the 1st January next must be left with The Law Society for entry, and the names of solicitors taking out their certificates after that date cannot be included in The Law List for 1938.

### PRACTICE DIRECTION.

In the judgment in a beneficiary's administration action where the deceased died upwards of six years before the judgment, the following enquiry (unless otherwise expressly directed by the judge) is to be inserted in place of the usual account of the testator's debts:—

"2. An enquiry whether there is any debt of the deceased remaining unpaid."

Issued by direction of the Judges of the Chancery Division.

2nd December, 1937. A. C. CLAUSON.

# Court Papers.

## Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE. | EMERGENCY ROTA. | APPEAL COURT No. 1. | GROUP II. MR. JUSTICE CLAUSON. Non-Witness. | MR. JUSTICE LUXMOORE. Witness. Part II. |
|---|---|---|---|---|
| | Mr. | Mr. | Mr. | Mr. |
| Dec. 13 | Blaker | Andrews | More | *Blaker |
| .. 14 | More | Jones | Hicks Beach | *More |
| .. 15 | Hicks Beach | Ritchie | Andrews | *Hicks Beach |
| .. 16 | Andrews | Blaker | Jones | *Andrews |
| .. 17 | Jones | More | Ritchie | *Jones |
| .. 18 | Ritchie | Hicks Beach | Blaker | Ritchie |

| DATE. | GROUP II. MR. JUSTICE FARWELL. Witness. Part I. | MR. JUSTICE BENNETT. Witness. Part II. | GROUP I. MR. JUSTICE CROSSMAN. Non-Witness. | MR. JUSTICE SIMONDS. Witness. Part I. |
|---|---|---|---|---|
| | Mr. | Mr. | Mr. | Mr. |
| Dec. 13 | *Ritchie | Andrews | Jones | *Hicks Beach |
| .. 14 | *Blaker | Jones | Ritchie | *Andrews |
| .. 15 | *More | Ritchie | Blaker | *Jones |
| .. 16 | Hicks Beach | Blaker | More | *Ritchie |
| .. 17 | Andrews | More | Hicks Beach | *Blaker |
| .. 18 | Jones | Hicks Beach | Andrews | More |

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

# Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 16th December, 1937.

| | Div. Months. | Middle Price 8 Dec. 1937. | Flat Interest Yield. £ s. d. | ‡ Approximate Yield with redemption £ s. d. |
|---|---|---|---|---|
| **ENGLISH GOVERNMENT SECURITIES** | | | | |
| Consols 4% 1957 or after ... ... | FA | 110¼ | 3 12 7 | 3 5 4 |
| Consols 2½% ... ... ... ... | JAJO | 74¼xd | 3 7 4 | — |
| War Loan 3½% 1952 or after ... | JD | 101¼ | 3 9 2 | 3 7 11 |
| Funding 4% Loan 1960-90 ... ... | MN | 112 | 3 11 5 | 3 4 7 |
| Funding 3% Loan 1959-69 ... ... | AO | 97¾ | 3 1 4 | 3 2 3 |
| Funding 2½% Loan 1952-57 ... ... | JD | 95½ | 2 17 7 | 3 1 0 |
| Funding 2½% Loan 1956-61 ... ... | AO | 89½ | 2 15 10 | 3 3 0 |
| Victory 4% Loan Av. life 22 years ... | MS | 111 | 3 12 1 | 3 5 9 |
| Conversion 5% Loan 1944-64 ... | MN | 114½ | 4 7 4 | 2 7 6 |
| Conversion 4½% Loan 1940-44 ... | JJ | 105¾xd | 4 5 1 | 2 9 9 |
| Conversion 3½% Loan 1961 or after | AO | 102 | 3 8 8 | 3 7 6 |
| Conversion 3% Loan 1948-53 ... | MS | 101½ | 2 19 1 | 2 16 7 |
| Conversion 2½% Loan 1944-49 ... | AO | 98 | 2 11 0 | 2 14 3 |
| Local Loans 3% Stock 1912 or after | JAJO | 86½xd | 3 9 4 | — |
| Bank Stock ... ... ... ... | AO | 342½ | 3 10 0 | — |
| Guaranteed 2½% Stock (Irish Land Act) 1933 or after ... ... ... | JJ | 77½xd | 3 11 0 | — |
| Guaranteed 3% Stock (Irish Land Acts) 1939 or after ... ... ... | JJ | 85½xd | 3 10 2 | — |
| India 4½% 1950-55 ... ... ... | MN | 112 | 4 0 4 | 3 5 6 |
| India 3½% 1931 or after ... ... | JAJO | 93½xd | 3 14 10 | — |
| India 3% 1948 or after ... ... | JAJO | 80xd | 3 15 0 | — |
| Sudan 4½% 1939-73 Av. life 27 years | FA | 111 | 4 1 1 | 3 16 10 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 107½ | 3 14 5 | 3 5 8 |
| Tanganyika 4% Guaranteed 1951-71 | FA | 109 | 3 13 5 | 3 2 11 |
| L.P.T.B. 4½% "T.F.A." Stock 1942-72 | JJ | 106xd | 4 4 11 | 2 17 9 |
| Lon. Elec. T. F. Corpn. 2½% 1950-55 | FA | 90 | 2 15 7 | 3 4 10 |
| **COLONIAL SECURITIES** | | | | |
| Australia (Commonw'th) 4% 1955-70 | JJ | 105xd | 3 16 2 | 3 12 4 |
| Australia (Commonw'th) 3% 1955-58 | AO | 90 | 3 6 8 | 3 13 9 |
| Canada 4% 1953-58 ... ... ... | MS | 109 | 3 13 5 | 3 5 5 |
| *Natal 3% 1929-49 ... ... ... | JJ | 98xd | 3 1 3 | 3 4 4 |
| New South Wales 3½% 1930-50 ... | JJ | 98xd | 3 11 5 | 3 14 0 |
| New Zealand 3% 1945 ... ... | AO | 98 | 3 1 3 | 3 6 1 |
| Nigeria 4% 1963 ... ... ... | AO | 108 | 3 14 1 | 3 10 6 |
| Queensland 3½% 1950-70 ... ... | JJ | 97xd | 3 12 2 | 3 13 2 |
| South Africa 3½% 1953-73 ... ... | JD | 102 | 3 8 8 | 3 6 8 |
| Victoria 3½% 1929-49 ... ... | AO | 99 | 3 10 8 | 3 12 1 |
| **CORPORATION STOCKS** | | | | |
| Birmingham 3% 1947 or after ... | JJ | 86xd | 3 9 9 | — |
| Croydon 3% 1940-60 ... ... | AO | 95 | 3 3 2 | 3 6 6 |
| *Essex County 3¼% 1952-72 ... | JD | 101xd | 3 9 4 | 3 8 4 |
| Leeds 3% 1927 or after ... ... | JJ | 84 | 3 11 5 | — |
| Liverpool 3¼% Redeemable by agreement with holders or by purchase... | JAJO | 98xd | 3 11 5 | — |
| London County 2½% Consolidated Stock after 1920 at option of Corp. | MJSD | 72 | 3 9 5 | — |
| London County 3% Consolidated Stock after 1920 at option of Corp. | MJSD | 85½ | 3 10 2 | — |
| Manchester 3% 1941 or after ... | FA | 86 | 3 9 9 | — |
| Metropolitan Consd. 2½% 1920-49 ... | MJSD | 96 | 2 12 1 | 2 18 0 |
| Metropolitan Water Board 3% "A" 1963-2003 ... ... ... ... | AO | 87½ | 3 8 7 | 3 9 9 |
| Do. do. 3% "B" 1934-2003 ... | MS | 88½ | 3 7 10 | 3 8 10 |
| Do. do. 3% "E" 1953-73 ... | JJ | 95½ | 3 2 10 | 3 4 3 |
| *Middlesex County Council 4% 1952-72 | MN | 107 | 3 14 9 | 3 7 11 |
| * Do. do. 4½% 1950-70 ... ... | MN | 112 | 4 0 4 | 3 6 10 |
| Nottingham 3% Irredeemable ... | MN | 84 | 3 11 5 | — |
| Sheffield Corp. 3½% 1968 ... ... | JJ | 102 | 3 8 8 | 3 7 10 |
| **ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS** | | | | |
| Gt. Western Rly. 4% Debenture ... | JJ | 109½ | 3 13 1 | — |
| Gt. Western Rly. 4½% Debenture ... | JJ | 117½ | 3 16 7 | — |
| Gt. Western Rly. 5% Debenture ... | JJ | 128½ | 3 17 10 | — |
| Gt. Western Rly. 5% Rent Charge ... | FA | 127½ | 3 18 5 | — |
| Gt. Western Rly. 5% Cons. Guaranteed | MA | 125½ | 3 19 8 | — |
| Gt. Western Rly. 5% Preference ... | MA | 117½ | 4 5 1 | — |
| Southern Rly. 4% Debenture ... | JJ | 106½xd | 3 15 1 | — |
| Southern Rly. 4% Red. Deb. 1962-67 | JJ | 105½xd | 3 15 10 | 3 13 3 |
| Southern Rly. 5% Guaranteed ... | MA | 125 | 4 0 0 | — |
| Southern Rly. 5% Preference ... | MA | 114½ | 4 7 4 | — |

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.